



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1626**

**Appeal MA-020306-1**

**Town of Ajax**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Town of Ajax (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to copies of all complaints or reports regarding a named property from January 1, 2001 to the date of the request, including any notes a named by-law officer may have regarding the said property and related complaints. He asked for specific information about each complaint: the source of the complaint, the manner in which the complaint was made, who the complaint was made to, the date and details of each complaint, a copy of any written complaint and actions taken by the by-law office regarding each complaint.

The Town located nine responsive records and granted partial access to them, severing information that would identify the complainant(s) under section 8(1)(d) (confidential source) of the *Act*.

In appealing this decision, the appellant indicated that he believed that he may be the victim of harassment and is thus seeking the information withheld from the records in order to determine whether to take civil action in this regard.

During mediation, the appellant clarified that he is interested in obtaining the names and addresses of the complainants.

Following discussions with the Mediator assigned to this appeal, the Town issued a revised decision letter in which it added sections 38(a) (discretion to refuse requester's own information) as well as section 14(1), with reference to sections 14(2)(h) and 14(3)(b) (invasion of privacy) to its decision. The Town also provided additional information to the appellant about the number of addresses from which the complaints originated.

No further mediation was possible and this appeal was forwarded to adjudication.

I decided to seek representations from the appellant, initially. I sent him a Notice of Inquiry setting out the facts and issues at adjudication. In the Notice, I outlined the evidence that I will consider in this inquiry, which includes the submissions made by the parties, the records themselves, previous orders of this office that address by-law enforcement issues, and information provided by the parties during mediation, which I summarized in the Notice under the heading "exercise of discretion" as well as any other information provided to me by the parties.

During mediation, the Mediator provided the appellant with copies of previous orders (Orders M-513, M-582 and M-147), which address identifying information about the complainant under section 8(1)(d) of the *Act*. In addition to these orders, I attached copies of Orders MO-1295 and MO-1435-I, which address the application of the personal privacy provisions in sections 14 and 38(b) of the *Act* to complainant information.

Finally, although the Town revised its decision to include the possible application of section 38(a) to the records for which section 8(1)(d) has been claimed, it only referred to the mandatory exemption in section 14(1) of the *Act* as an additional basis for withholding the records. Since it appears that the records contain the appellant's personal information, I also included the possible

application of the discretionary exemption in section 38(b) (which also deals with the invasion of personal privacy in cases where the record contains the personal information of the requester and other identifiable individuals).

The appellant submitted representations in response.

Upon review of the records at issue, I decided to seek representations from the Town. Following receipt of the Notice of Inquiry, the Town issued a supplementary decision to the appellant in which it revised its decision with respect to Record 10, which the Town had initially withheld in full. The Town disclosed most of this record to the appellant, withholding information that would identify the complainants, consistent with its previous decision. As a result, only the severed portions of Record 10 remain at issue.

The Town also submitted representations on the withheld portions of the records.

## **RECORDS:**

The records at issue comprise four complaints (Records 1, 4 (both sides), 5 and 8) and Record 10, which is a two-page summary of the complaints. Only the information that would identify the complainants has been withheld from the records.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual 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.

The records at issue all relate to by-law complaints made against the appellant's use of his property. As such, I find that they all contain the appellant's personal information.

The only portions of Records 1, 4, 5 and 8 that have been withheld are the names, addresses and/or telephone numbers of the complainants and discrete words or phrases that would, if disclosed, reveal the identity of the complainants. I find that these portions of the records contain the complainants' personal information.

Record 10 is an inter-office memorandum from the By-law Enforcement Officer (the by-law officer) to the Town's Freedom of Information and Privacy Co-ordinator (the Co-ordinator) regarding the appellant's access request. In this memorandum, the by-law officer provides an outline of the circumstances regarding the complaints and actions taken by the Town (from his review of the file concerning the specified property). Although created after-the-fact and for a

different purpose, the Town appears to accept that this is a record responsive to the request and I agree.

Portions of this record contain much of the same information that is found in Records 1, 4, 5 and 8, some of which has already been disclosed to the appellant. As I indicated above, the Town revised its decision regarding this record and has now disclosed the bulk of the information in it. The withheld portions of Record 10 identify the complainants by name, address or context and this information constitutes their personal information since its disclosure would reveal that these individuals have made complaints under the Town's by-law process.

### **INVASION OF 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 head 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 section 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 16 exemption.

Previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the *Act* (Orders M-16 and M-582 and MO-1295, for example). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal.

The records at issue concern alleged infractions of the Town's by-law relating to land use and property standards, and the actions taken by the Town to enforce the by-law and I find, therefore,

that they relate to a law enforcement matter. More particularly, the records relate to the Town's investigation into the alleged infractions. Consistent with previous orders, I find that this constitutes an investigation into a possible violation of law.

Accordingly, I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law, that is, the Town's Property Standards By-law and its disclosure would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(b) of the *Act*.

The appellant states:

Our goal was to determine if the complaints were valid or invalid, and whether the complaints came from multiple sources or multiple complaints were from the same source ... We have been threatened with revenge by certain parties over other issues ... and therefore had probable cause to believe harassment was likely.

He outlines the sequence of events relating to the various complaints and actions that were taken by the Town (and has attached supporting documentation in this regard), and continues:

What it comes down to is when someone complains, true or not; the bylaw officer reacted with increasing severity, but never challenged the complaint, knowing we suspected harassment. This begs the question, 'What protection do we have as citizens of the [Town] against a malicious neighbour, using our public service for personal gain or revenge by lying, under the cloak of Freedom of Information?'. We posed this question to the Bylaw officer and received an unsatisfactory reply of 'There is nothing we can do about it'.

I am sure that the above illustrates our mistrust in the system, protecting guilty abusers of a Bylaw system that is afraid to act independently and challenge the complaints. In a criminal court one is innocent until proven guilty. In the Bylaw system one is just guilty. When asked what the rules are by the Bylaw office, they were unable to supply them. We were told that you had to break them and receive a complaint before you could find out that you did so. For this reason we question the whole Bylaw system ...

In Interim Order MO-1435-I, I discussed the reason for protecting the confidentiality of the identities of complainants (at pages 19-20):

As far as any other records that might exist, many previous orders of this office have held that the nature of the "complaint process" is such that it creates a reasonable expectation of confidentiality on the part of complainants (see, for example: Order PO-1706 which dealt with a complaint under the *Ontario Water Resources Act*; Order P-1098 concerning complaints under other environmental laws; Order P-1181 regarding complaints under the *Gaming Control Act*; and

Order M-475 relating to the by-law enforcement process.) In many cases, the decision to withhold the identities of complainants has been based on other provisions of the *Act* (section 14(3)(b) or its provincial equivalent 21(3)(b) - possible violation of law, or section 8(1)(d) or its provincial equivalent 14(1)(d) - confidential source). In all of these cases, however, the confidentiality of the complaint process is central to the issues that were considered.

The reason for protecting the confidentiality of the identities of complainants or “confidential sources” as they are often referred to, was noted in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto Queen’s Printer, 1980) at page 296:

... the effect of erring on the side of too much disclosure in law enforcement matters may have very severe consequences for affected individuals. Inadvertent disclosure of the identity of informants, for example, could not only prove embarrassing but may place their lives or safety in peril.

Therefore, even in the absence of explicit assurances of, or requests for confidentiality, there is a reasonable expectation that communications between complainants would be maintained in confidence. This extends to information that would identify whether or not an individual was involved in the complaint process.

In my view, these considerations are relevant in the current appeal.

The Town has already provided the appellant with information about the sources of the complaints that it received regarding the appellant’s property. He has also been provided with the majority of the records, which describe the nature of the complaints. In my view, this information is sufficient to enable the appellant to know that the complaints came from a number of sources as opposed to one individual, as well as information to assess whether they are “true or not” and thus address two of his concerns.

It is apparent that, although the appellant believes that the source(s) of the complaints are the cause of his problems, his representations and supporting documentation reflect his frustration and dissatisfaction with the Town’s processes and practices with respect to its by-law enforcement.

While I understand that the appellant is frustrated and feels impotent and victimized by the by-law process itself, I am not persuaded that his expressed concerns would be addressed by disclosure of the identities of the complainants.

Moreover, as I indicated above, once a presumption is found to apply to the personal information in a record, it cannot be rebutted by the factors or circumstances under section 14(2).

I find that neither section 14(4) nor 16 applies to the personal information in the circumstances of this appeal.

### **Exercise of Discretion**

The section 38(b) exemption is discretionary, and permits the Town to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Town's decision to determine whether it exercised discretion and, if so, to determine whether it erred in doing so (see: Order PO-2129-F).

Upon review of all of the circumstances of this appeal and the representations submitted by both parties, as discussed above, I am not satisfied that the Town has erred in the exercise of its discretion under section 38(b) to withhold the information at issue.

Because of these findings, it is not necessary to consider the possible application of sections 8(1)(d) and 38(a) of the *Act*.

### **ORDER:**

I uphold the Town's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ March 25, 2003