



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1682**

**Appeal MA-020393-1**

**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*) from an individual for copies of all information about the requester held by a particular City-operated hostel.

In response, the City identified 27 pages of responsive records, and granted access to 25 of them, in whole or in part. The City then issued a decision letter in which it denied access to two pages of records in full, and to portions of three other pages. The City denied access to those pages and portions of pages on the basis of sections 38(b) and 14(1) (invasion of privacy), with reference to the factors found in sections 14(2)(f) and 14(2)(h) of the *Act*.

The requester (now the appellant) appealed the decision. In his letter of appeal the appellant provided context to his request, and referred to a number of reasons why he believes he should be given full access to the information.

Mediation could not resolve the issues, and this file was transferred to the inquiry stage of the process. Based on the information provided to me, I decided to identify section 13 (danger to safety or health) as a possible issue in this appeal. I initially sent a Notice of Inquiry to the City and a number of possible affected parties, setting out the facts and issues in this appeal. I received representations from the City.

In its representations the City identified that, based on information it had received, it was no longer denying access to portions of two records (portions of Records 4 and 23), and that these records could now be disclosed to the appellant. Accordingly, those two records are no longer at issue in this appeal.

I then sent the Notice of Inquiry, along with a copy of the non-confidential portions of the City's representations, to the appellant, who provided representations in response.

## **RECORDS:**

The following records remain at issue:

- Record 3 – handwritten notes re: Vital Case Information (access denied to one sentence)
- Record 8 – a one-page Incident Report dated August 13, 2001 (access denied in full)
- Record 9 – a one-page Incident Report dated July 13, 2001 (access denied in full)

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual including:

- (e) the personal opinions or views of the individual except if they relate to another individual,

...

- (g) the views or opinions of another individual about the individual,
- (h) the individual's name if 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 City refers to sections 2(1)(e), (g) and (h) in support of its position that the information in the records constitutes the personal information of both the appellant and other individuals. The City identifies the circumstances giving rise to the creation of the records, namely, the concerns raised regarding the appellant's inappropriate behaviour, which eventually led to the appellant being barred from the hostel for a period of time. After referring to the fact that the records contain information about the appellant, the City identifies that it also contains the name of an employee, as well as statements made by the employee. Previous orders of this office have identified that information provided by individuals in their professional capacity is not considered the personal information of those individuals (see Order PO-1725 and Reconsideration Order R-980015); however, the City states:

The circumstances in which these views [contained in the record] are expressed, however, are not in a normal staff/client context nor are they the result of events relating to the employee's usual work responsibilities. Therefore, although on the face of it, some of the employee's comments may appear to reflect a somewhat "professional" viewpoint, the information at issue is in fact highly personal in nature.

The City submits therefore, that this information meets the above requirements of the definition of "personal information" in section 2(1) of the *Act*.

This personal information contained in the records is that of the appellant and the employee.

I have reviewed the records at issue to determine whether they contain personal information, and if so, to whom the personal information relates.

Two of the records are incident reports that relate to complaints made about the appellant. These records include the name and date of birth of the appellant, an identification of the date, time and type of violation, an identification of the disposition of the matter, a portion entitled "Police Calls", and a portion identified as "details of the incident", which includes the name and signature of the complainant. Record 9 also includes a section entitled "Supervisor's Remarks" which is signed by a supervisor and identifies both the actions taken by the appellant's worker, as well as the appellant's response to these actions.

The third record consists of the severed portion of a handwritten document entitled "Vital Case Information" (Record 3). It relates to the incidents resulting in one of the incident reports, and

contains the name and a one-sentence description of the actions resulting in the complaint, including the complainant's feelings about those actions.

The records remaining at issue all relate to the investigation of the complaints about the appellant, and I find that all three of them contain the personal information of the appellant.

With respect to Record 3, it contains specific information about the complainant, including her feelings and reactions, and I am therefore satisfied that it contains the complainant's personal information. I accept the City's position that, although the complainant is an employee of the City, the complaints do not relate to the complainant's professional responsibilities. In my view, it contains the complainant's "personal information" for the purpose of the *Act*.

With respect to the two incident reports (Records 8 and 9), I find that portions of these records also contain the personal information of the complainant. In the "Details of Incident" portions of both of these records, the complainant describes situations that occurred involving the appellant. She states her views about the appellant's actions, including her views regarding the levels of acceptable behaviour, and statements that reveal other personal information about her. Portions also contain the complainant's views and opinions regarding the appellant and, in accordance with paragraphs (e) and (g) of the definition of personal information, this should qualify as only the personal information of the appellant. However, in the context in which this information is set out (two incident reports), I find that they also contain other information about the complainant and as such, these portions of the two records also contain her personal information.

In addition, I find that the "Details of Incident" portion of Record 8 also contains the personal information of other individuals, namely the witnesses or others directly or indirectly involved in the incidents. The personal information about these individuals includes their identity, in conjunction with the fact that they were somehow involved in the incidents.

However, once the name and other identifying information of the complainant and other individuals is removed from Records 8 and 9, and once the "Details of Incident" portion of these records is severed out, I find that the remaining portions of these records do not contain the personal information of any identifiable individuals other than the appellant. As described above, the remaining portions of these records include the name and date of birth of the appellant, an identification of the date, time and type of violation, an identification of the disposition of the matter, and a portion entitled "Police Calls". Record 9 also includes a section entitled "Supervisor's Remarks" which is signed by the supervisor and identifies the actions taken by the appellant's worker, as well as the appellant's response. Although some of this information contains the names of identifiable individuals, I find that the information relates to these individuals in their professional capacities as either workers or supervisors carrying out their professional responsibilities. In accordance with previous orders of this office, information pertaining to individuals in the performance of their professional responsibilities does not constitute the personal information of those individuals. [See Orders PO-1739-R and PO-1725 and Reconsideration Order R-980015]

In summary, I find that the records contain the personal information of the appellant. I also find that the severed portion of Record 3, and portions of Records 8 and 9 (namely, the name and

other identifying information of the complainant, and the portions described under "Details of Incident"), also contain the personal information of other identifiable individuals.

## **INVASION OF PRIVACY**

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 City 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 section 38(b) exemption only applies to information which contains the "personal information" of the appellant and other individuals, as defined in section 2. Accordingly, I need only evaluate whether the exemption applies to those portions of the records which I have found contain the personal information of both the appellant and other identifiable individuals.

## **Representations of the Parties**

The City has referred to sections 14(2)(f) and (h) as relevant factors in this appeal. The appellant points to the factors in sections 14(2)(a), (b), (d), (f) and (h). These sections read as follows:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;  
and

The City takes the position that the factors favouring non-disclosure of the personal information of the identifiable individuals include the “highly sensitive” nature of the information as contemplated by section 14(2)(f), and that the personal information was supplied by the complainant “in confidence” under section 14(2)(h). The City has also provided me with additional information in support of this contention, which I am unable to refer to in the text of this order because of confidentiality concerns. Furthermore, the City states:

It is the City’s view that staff would be reluctant to complain about sexual harassment or raise other sensitive personal issues, if there were no assurances that detailed and confidential information would not be disclosed to the very person being complained about ...

The City also referred to the following as a factor it considered when deciding to exercise its discretion not to disclose the records:

In denying access to the records, the City also considered whether or not sufficient information was provided to the appellant to explain why he was being barred from [the City-operated hostel]. The records disclosed to the appellant contain information showing that despite several warnings, the appellant behaved inappropriately towards female staff and as a consequence was being banned for a year. The City submits that therefore, there was substantive disclosure of the

nature and validity of the complaints against the appellant and that the further disclosure of the information at issue would not further the appellant's understanding as to why he is not welcomed at [the hostel].

The appellant has made very detailed and lengthy representations in response to both the Notice of Inquiry and the portions of the City's representations which were shared with him. The appellant takes issue with or questions a number of statements made in the City's representations. The appellant also refers to the factors set out in sections 14(2)(a), (b), (d), (f) and (h) in support of his position that he should be granted access to the records.

### **Findings**

I find that the factors set out in sections 14(2)(e) and (h) are relevant factors favouring non-disclosure of the records. I find that the information contained in the portions of the records remaining at issue is information which is "highly sensitive" given the nature of the allegations made in the records. I also find that the information was supplied in confidence by the individual to whom the information relates.

I have reviewed the appellant's detailed representations. Much of the appellant's representations focus on the City's references to the background information, which the appellant believes the City has wrongly characterized. Other substantial portions of his representations include details of the appellant's view of the circumstances which eventually resulted in the complaints, and the appellant's explanations of these events. In my view, this information has little relevance to the issue before me regarding access to the portions of the records at issue.

With respect to section 14(2)(a), the appellant refers to particular shelter housing guidelines, and identifies that he disagrees with these guidelines. In my view this concern is not relevant to the request for the records at issue, and section 14(2)(a) is not a relevant factor in this appeal.

The appellant takes the position that section 14(2)(b) is a factor to consider; however, the thrust of his submission concerns the value and importance of shelters in the community. I find that this factor is also not relevant in the circumstances of this appeal.

With respect to the factor in section 14(2)(f), the appellant identifies the difficulty of addressing whether or not the information is "highly sensitive" without access to the information at issue. I do not consider this to be a factor favouring disclosure. Concerning section 14(2)(h), the appellant identifies that, notwithstanding any assurances of confidentiality which may have been given, there are circumstances where information should nonetheless be disclosed. Although I agree with the appellant's position on that issue, it is not a factor favouring disclosure; rather, it is the decision that I must make after reviewing all of the relevant factors in this appeal.

One of the appellant's main concerns, which he includes under his references to the factors in sections 14(2)(a), (d), (h) and indirectly under section 14(2)(b), is his interest in finding out exactly what actions of his were considered "inappropriate" and resulted in his ban from the shelter. This raises the possible application of an unlisted consideration under section 14(2) which can be described as the requirement that he receive "an adequate degree of disclosure" in

order to be able to properly understand the reasons for the actions taken against him by the City-operated hostel. (See Order MO-1574-F) The appellant refers to the rights of individuals in a courtroom, and states that he should similarly have the right to know the particulars of any allegations against him.

In reviewing the factors referred to by the appellant, I find that the appellant's concern that he receive "an adequate degree of disclosure" in order to properly understand the reasons for the actions taken against him is a relevant factor favouring disclosure. However, I find that this factor is offset somewhat by the disclosure which has already been provided to the appellant by the City, as referred to in the City's representations. Furthermore, on the basis of the appellant's own representations, it is clear that he has been provided with significant information relating not only to the circumstances resulting in the complaints, but also to other information resulting from these complaints.

After weighing the factors referred to above, I find that the disclosure of the personal information contained in the records which relates to the appellant and other identifiable individuals would constitute an unjustified invasion of the personal privacy of other individuals. I am also satisfied that the City's discretionary decision to deny access to these portions of the records was made in full appreciation of the facts and upon proper application of the applicable principles of law. Accordingly, I find that this information is exempt under section 38(b) of the *Act*.

I have provided the City's Freedom of Information Co-ordinator with a highlighted copy of the records indicating those portions which contain the personal information of both the appellant and other identifiable individuals, and which should not be disclosed to the appellant.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/DANGER TO HEALTH OR SAFETY**

As noted above, section 36(1) of the *Act* provides individuals with a general right of access to their own personal information in the custody or under the control of an institution. Section 38 provides a number of exceptions to this general right of access. Under section 38(a), a head may refuse to disclose to the individual to whom the information relates personal information where (among others) the exemption in section 13 would apply to the disclosure of that personal information.

Section 13 of the *Act* reads:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

In order to qualify for exemption under section 13 of the *Act*, the test to be applied is set out by the Ontario Court of Appeal in *Ontario (Ministry of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (Ont. C.A.), at page 6:

. . . section 20 [the provincial equivalent provision to section 13] calls for a demonstration that disclosure could reasonably be expected to seriously threaten



the safety or health of an individual, as opposed to there being a groundless or exaggerated expectation of a threat to safety. Introducing the element of probability in this assessment is not appropriate considering the interests that are at stake, particularly the very significant interest of bodily integrity. It is difficult, if not impossible to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be endangered by disclosing a record, the holder of that record properly invokes ss. 14(1)(e) or 20 to refuse disclosure.

As noted above, I invited the parties to comment on the possible application of section 13 in the circumstances of this appeal. The City has provided representations relating to section 13. It states:

... the appellant exhibited obsessive and inappropriate behaviour towards female staff which was serious enough to warrant the Police being called out.

The disclosure of the information at issue would therefore cause much concern to ... employees and could reasonably be expected to seriously threaten their mental well-being.

As set out above, I have found that the portions of the records containing the personal information of identifiable individuals other than the appellant is exempt from disclosure under section 38(b), and I will confine my analysis of section 13 to those portions of Records 8 and 9 which I have found contain the personal information of the appellant only.

Concerning the portions of the records containing only the appellant's information, I find that their disclosure could not reasonably be expected to seriously threaten the safety or health of any individual. This information does not contain the personal information of any other individuals. Furthermore, much of this information simply identifies the process and steps taken in response to the complaints, which directly involved the appellant and of which he is already aware. In my view, there is no reasonable basis for believing that disclosing the non-highlighted portions of the records will endanger a person's safety or health. Accordingly, I find that the non-highlighted portions of Records 8 and 9 are not exempt from disclosure under section 13 in conjunction with section 38(a).

## **ORDER:**

1. I order the City to disclose to the appellant those portions of Records 8 and 9 which are **not** highlighted on the copy which I have provided to the City's Freedom of Information and Privacy Protection Coordinator, by providing him with a copy by **October 3, 2003** but not before **September 29, 2003**.
2. I uphold the City's decision to deny access to the severed portion of Record 3 and the highlighted portions of the Records 8 and 9.

3. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the City to provide me with copies of the records that are disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ August 29, 2003