



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-1721-F

Appeal MA-010346-2

City of Hamilton



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This is my final order in Appeal MA-010346-2, and addresses all issues not covered by Interim Order MO-1654-I.

NATURE OF THE APPEAL:

The City of Hamilton (the City) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) that read as follows:

I would like access to all records related to the review of the management and or operations of the City's emergency medical service (EMS). Without limiting the generality of the foregoing, please include all memoranda, e-mails and consultant reports. Please also include all records related to the dismissal of the manager of the EMS [a named individual].

The City identified six files of responsive records, and denied access to almost all of them.

The appellant appealed the City's decision.

During mediation, a number of records were removed from the scope of the appeal. Mediation was otherwise not successful and the appeal was transferred to the adjudication stage.

I initially restricted my inquiry to the records for which section 52(3) might apply, because the City relied on that section as the basis for denying access to almost all of the requested records. If a record falls within the scope of section 52(3), it is excluded from the *Act*.

Following that inquiry, I issued Interim Order MO-1654-I, which disposed of all but seven of the records originally at issue in this appeal. I then proceeded with my inquiry into whether any of the remaining records qualify for exemption under section 10 (third party information), section 11 (economic interests of the City), or section 14 (invasion of personal privacy) of the *Act*, as claimed by the City.

I started this process by sending a Supplementary Notice of Inquiry to the City and three organizations that could be impacted by disclosure of certain identified records (the affected parties). One affected party responded by indicating that it does not object to disclosure, and the two other affected parties did not respond to the Notice.

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

In its representations, the City withdrew the section 10 and section 11 exemption claims for five of the remaining records:

- Record 64(a) – File #1
- Records 2, 3, and 4 – File #2
- Record 1 – File #2

As a result, I have no evidence or argument from any party resisting disclosure of these five records. I find that none of them, on their face, qualifies under the mandatory section 10 exemption claim, and that all five of these records should be disclosed to the appellant. As a result, only two records and one exemption (section 14) remain at issue in this appeal.

RECORDS:

The records remaining at issue are as follows:

File #5 – Ambulance - Record 3, page 2

File #5 – Ambulance - Record 24, page 3 and portions of page 22

Record 3, page 2 is an email dated July 14, 2001 from a paramedic to the EMS base hospital regarding the EMS reorganization.

Record 24 is a 1-page agenda of an EMS team meeting, together with 25 pages of attachments. Page 3 and the top portion of page 22 are email exchanges that identify and comment on a number of individuals.

DISCUSSION:

PERSONAL INFORMATION

Introduction

The section 14 personal privacy exemption only applies to “personal information”, as defined in section 2(1) of the *Act*. “Personal information” means recorded information about an identifiable individual, and includes information relating to the medical history or employment history of the individual [paragraph (b)]; the personal opinions or views of an individual except as they relate to another individual [paragraph (e)]; the views or opinions of another individual about the individual [paragraph (g)]; or 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 City claims that page 2 of Record 3 contains information relating to the medical history of an identifiable individual. It is clear from a reading of page 2 that portions of it contain medical information; the only issue is whether this information is about an identifiable individual.

The person whose medical information is in question is not identified by name on page 2. However, given the specific nature of the medical information and the context in which it appears, I accept that this individual could readily be identified by associating the information on page 2 with other publicly available information. Accordingly, I find that the portions of page 2 of Record 3 that contain medical information qualify as the “medical history” of an identifiable individual and therefore fall within the scope of paragraph (b) of the definition in section 2(1).

The City also submits that the cell phone number of the author of page 2 of Record 3 qualifies as his personal information. The City states:

The cell phone number is a telephone number of an identifiable individual - the e-mail author. It is not listed in the author's signature line, which contains an office telephone number, a City assigned pager number, and a City fax number.

I accept the City's position and find it reasonable to conclude that the cell phone number that appears in the last sentence of the e-mail message on page 2 is a personal phone number and therefore qualifies as the personal information of the author of the e-mail.

I find that the rest of page 2 does not include any "personal information" as the term is defined in the *Act*. The e-mail message is authored by a City employee and sent to his manager, and it deals with an event that occurred in the course of discharging professional responsibilities. It is well established that, barring unusual circumstances, information about an individual acting in a professional rather than a personal capacity does not qualify as that individual's personal information and, in my view, once the medical information and cell phone number are removed from page 2, the portions that remain do not relate to the author in a personal capacity and therefore do not meet the definition of "personal information". Because only "personal information" can qualify for exemption under section 14, the portions of page 2 of Record 3 that do not contain medical information or the cell phone number do not qualify for exemption under section 14 and should be disclosed.

Page 3 of Record 24 is an email message marked "confidential". It deals with the job performance of various people involved with a training program offered by the City's EMS unit. A number of individuals are identified by name, and the content of page 3, for the most part, consists of the personal views or opinions conveyed by the author about these identified individuals. As such, I find that the email message that comprises page 3 of Record 24 falls with the scope of paragraph (g) of the definition of "personal information" in section 2(1).

I have considered whether page 3 could be severed in a manner that would remove any "personal information" and permit the rest of the record to be disclosed, but have concluded that it is not reasonably possible to do so in the circumstances.

The top portion of page 22 of Record 24 is also an email message, marked "private". It discusses the agenda of an upcoming meeting and items the author intends to raise for discussion.

The second paragraph of the message deals with an employment-related matter involving a City staff person, which I find constitutes that individual's "personal information" (paragraph (b)). The fourth paragraph of the message deals with the relationship between the author of the message and another employee who is identified by name. Because of the human resources issues at play during the time the email was created, I find that certain portions of the fourth paragraph constitute the "personal information" of the identified person.

The rest of the email message at the top of page 22 does not contain “personal information” and therefore cannot qualify for exemption under section 14 and should be disclosed.

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 14 of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only section with potential application in the instance of this appeal is section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(2) provides some criteria for determining whether the personal privacy exemption applies. The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), 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).

The portions of section 14(2) and (3) relevant in the context of this appeal read as follows:

- (2) 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,
 - (f) the information is highly sensitive;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(d) relates to employment or education history;

The appellant's representations do not deal directly with the medical information that appears on page 2 of Record 3. As far as the cell phone number is concerned, the appellant acknowledges that a personal cell phone number qualifies for exemption under section 14.

The City submits that the medical information falls within the scope of a presumed unjustified invasion of privacy under section 14(3)(a).

I concur with the City, and find that disclosing the portions of page 2 of Record 3 that contain medical information would constitute a presumed unjustified invasion of privacy and this information qualifies for exemption under section 14 of the *Act*.

The City submits that the information on page 3 of Record 24 is highly sensitive and was supplied in confidence by the author of the email message. The appellant does not identify any specific factors favouring disclosure of page 2, but suggests that any personal information could be severed from this page and the rest released.

It is clear from the content of page 3 that the author intended his email message to be treated confidentially, which is a factor favouring privacy protection. In the absence of any factors favouring disclosure identified by the appellant, I find that the expectation of confidentiality is sufficient to support my finding that disclosure of the personal information on page 3 would constitute an unjustified invasion of the privacy of the various individuals identified in the email. Accordingly, I find that page 3 of Record 24 qualifies for exemption under section 14. I have already determined that severance is not an option for this page.

The City submits that the portions of page 22 of Record 24 that contain the employment history of a City employee fall within the scope of the presumed unjustified invasion of privacy under section 14(3)(d).

The appellant submits:

To suggest that an off-hand comment that an individual has resigned constitutes information about an individual's employment history is a stretch, in my view. It is really hearsay and may or may not be true. Details about an individual's employment history would necessarily have to be verified detailed contained in some form of official record. The exemption was not meant to prohibit the releases of records that may contain office gossip.

The appellant's characterization of the portions of page 22 that reflect an individual's employment history is not accurate. These portions deal not only with the employee's status, but also speak to broader issues relating to the workplace and this employee's involvement in

ongoing labour-relations issues. I accept the City's position that this information falls within the scope of the section 14(3)(d) presumption.

The appellant also points out that the name of the employee has already been disclosed to him in the City's representations, thereby precluding the City from now relying on section 14 as the basis for denying access to this information. I do not accept the appellant's position. It is unfortunate that the individual's name was disclosed in the City's representations, but it does not necessarily follow that his personal information should now be made available under the substantive provisions of the *Act*. It has been said on many occasions that disclosure under Part II is "disclosure to the world", and I can see no reason to permit a mistake made by the City in its representations to further compromise the privacy interests of this employee. The information on page 22 that falls within the scope of the section 14(3)(d) presumption consists of more than the name of the employee. As such, I find that it qualifies for exemption under section 14 and should not be disclosed.

As far as the fourth paragraph on page 22 is concerned, the appellant does not identify any specific factors favouring disclosure of this information, only arguing that efforts should be made to sever any personal information and disclose the rest. The City submits that the views and opinions of the author of the email were supplied in confidence and are highly sensitive given the issues at play in the workplace at that time.

Similar to page 3, it is clear from the content of page 22 of Record 24 that the author intended his email message to be treated confidentially, which is a factor favouring privacy protection. In the absence of any factors favouring disclosure identified by the appellant, I find that the expectation of confidentiality is sufficient to support my finding that disclosure of the personal information contained in the fourth paragraph of page 22 would constitute an unjustified invasion of the privacy of the individuals identified in the paragraph, and that this information qualifies for exemption under section 14. I have already severed this paragraph in my findings under section 2(1) and the appellant will receive access to the portions that do not contain any "personal information".

FINAL ORDER:

1. I order the City to disclose the following records to the appellant by **December 23, 2003**:

File #1 - Record 64(a)

File #2 - Records 1, 2, 3 and 4

File #5 - the portions of page 2 of Record 3 and page 22 of Record 24 that do not contain "personal information".

2. I uphold the City's decision to deny access to File #5 Record 24 page 3 and the portions of File #5 Record 3 page 2 and File #5 Record 24 page 22 not covered by Provision 1 of this order. I have attached a copy of page 2 of Record 3 and page 22 of Record 24 with

the copy of this order sent to the City, which identifies the portions that qualify for exemption and should **not** be disclosed.

3. In order to verify compliance with the terms of Provision 1, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellant, upon request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 3, 2003 _____