



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1702-F

Appeal MA-020400-1

Town of Caledon



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NATURE OF THE APPEAL:

A private individual made a request to the Town of Caledon (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a specific complaint registered against the individual and identified by number.

The Town granted the individual access to part of the complaint. The Town, however, did not release the complainant's name, address and telephone number, applying section 14 (personal privacy) of the *Act*.

The individual appealed the decision.

I then conducted an inquiry into the appeal, and sought representations from both the Town and the individual (now the appellant). Only the Town responded.

In my Interim Order MO-1671-I, I agreed with the Town that the information withheld from the appellant had been compiled and is identifiable as part of an investigation into an alleged violation of the law. I also found, however, that though the Town relied on section 14 to withhold the information in the record, since the record contains personal information of both the appellant and another individual, the section 38(b) exemption was the appropriate one to consider in this case. Section 38(b) is a discretionary exemption. As a result, I found that the Town could refuse to disclose the information at issue under the exemption at section 38(b). In the circumstances, it appeared that the Town had not exercised its discretion under section 38(b). Accordingly, I required it to do so, taking into account all relevant factors and circumstances of the case, and with reference to the principles in Orders PO-2129-F and MO-1498.

The Town provided representations on its exercise of discretion. Although I invited the appellant to comment on these representations, the appellant did not do so. The purpose of this order is to rule on the issue of whether or not the Town has appropriately exercised its discretion.

DISCUSSION:

EXERCISE OF DISCRETION

Introduction

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. However, this office may not substitute its own discretion for that of the institution [see section 43(2)]. This office may find that an institution erred in its exercise of discretion where, for example:

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

In that event, this office may send the matter back to the institution for a re-exercise of discretion, based on proper considerations [Order MO-1573].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that:
 - information should be available to the public;
 - individuals should have a right of access to their own personal information;
 - exemptions from the right of access should be limited and specific;
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking their own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

Representations

The Town states:

The personal information about the appellant and the information regarding the property of the appellant have been released. It is the personal information about

the complainant that is subject of this appeal. The Town is exercising its discretion under Section 38(b) to refuse to disclose the personal information of the complainant to the appellant because it is an unjustified invasion of personal privacy.

In reviewing our discretion to disclose the severed information under Section 38(b), we believe that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy because that information was provided to the Town in confidence (Section 14(2)(h)) pursuant to an investigation into a possible violation of law (Section 14(3)(b)). Furthermore, the severed information does not meet the criteria in Section 14(4) nor is it of compelling public interest to disclose the information (Section 16) as it only relates to the two parties in question, the appellant and the complainant. In cases such as this, we could also consider Section 14(2)(e) as being relevant as the release of the severed information would serve no purpose other than to provide the contact information of the complainant to the appellant.

As provided in our representations of May 9, 2003:

“the Town's by-law enforcement personnel generally assure complainants that their names, addresses, etc. will not be disclosed; with that approach people are not inhibited when it comes to reporting contraventions of the Town's by-laws.”

As already indicated, the appellant provided no representations on this issue.

Conclusion

I am satisfied that the Town exercised its discretion, and that it did not err in doing so by taking into account irrelevant considerations, failing to take into account relevant considerations, or in any other respect. Accordingly, I uphold the Town's decision to withhold the information.

ORDER:

I uphold the Town's decision to withhold the information.

Original signed by: _____
Rosemary Muzzi
Adjudicator

October 28, 2003 _____