



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

# **ORDER MO-1755**

**Appeal MA-030244-1**

**City of Niagara Falls**



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## **NATURE OF THE APPEAL:**

The City of Niagara Falls (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the burial of a named individual at a cemetery operated by the City. The City located a number of responsive records and, as they appeared to contain personal information, notified an individual (the affected person) whose rights may be affected by its disclosure under section 21 of the *Act*.

The affected person objected to the disclosure of the records to the original requesters. The City issued a decision letter to the affected person indicating that it had decided to disclose portions of five records to the original requesters. The affected person, now the appellant, appealed the City's decision to disclose several additional portions of these five records on the basis that they contain personal information and that their disclosure would result in an unjustified invasion of personal privacy under section 14(1) of the *Act*. The original requesters also appealed the City's decision to deny access to the undisclosed portions of the five identified records and raised a number of other issues. This appeal (MA-030331-1) will be disposed of in a separate decision.

As the appellant is the only party resisting the disclosure of certain portions of the five records at issue in this appeal, I decided to seek her representations initially by providing her with a Notice of Inquiry setting out the facts and issues in dispute in the appeal. I also requested and received submissions from the City setting out its position on the disclosure of the information in the records. The appellant submitted representations which I summarized for the original requesters in the Notice of Inquiry provided to them. In her representations, the appellant indicated that she no longer objects to the disclosure of Record 4 to the appellants. As a result, I will include an order provision requiring the City to do so. The original requesters also submitted representations in response to the Notice.

## **RECORDS:**

The records, or parts of records, at issue in this appeal consist of:

1. A Deed to a specific plot in Fairview Cemetery dated May 13, 1939 (in its entirety).
2. A Certificate issued to (a named individual) regarding that plot (information contained in the fourth line of the document).
3. An Internment Order of (a named individual) dated August 10, 2002 (address of deceased person).
4. A Contract for cemetery services dated August 7, 2002 (address and telephone number of the appellant).

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 14(1) applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable

individual, including information relating to financial transactions in which the individual has been involved [section 2(1)(b)], the address or telephone number of the individual [section 2(1)(d)], the opinions or views of the individual [section 2(1)(e)] and 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 [section 2(1)(h)]. [Order PO-1706]

I have reviewed the information which the appellant is objecting to disclosing and make the following findings:

- Record 1 contains the personal information of the deceased person's father as it describes a particular financial transaction involving the purchase of a cemetery plot in which this individual was involved in 1939 [section 2(1)(b)]. Section 2(2) excludes from the definition of personal information any information about an individual who has been dead for more than thirty years. I have not been provided with any evidence to assist me in making a finding that the deceased person's father has, in fact, been dead for more than thirty years. As a result, I am unable to apply section 2(2) to this information.
- The appellant objects to the disclosure of one sentence from the fourth line of Record 2. I find that this information qualifies as the personal information of the appellant as it represents her personal opinions or views [section 2(1)(e)] and includes the appellant's name along with other personal information relating to her [section 2(1)(h)].
- The information in Record 3 which the appellant objects to being disclosed consists of the deceased person's address. I find that this qualifies as his personal information under section 2(1)(d).
- The appellant objects to the disclosure of her address and telephone number in Record 5. I find that this information qualifies as her personal information under section 2(1)(d) as well.
- None of the records contain any personal information relating to either of the original requesters.

## **INVASION OF PRIVACY**

Where a requester seeks personal information of another individual, section 14(1) 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 which may apply in the circumstances 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 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 the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which 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. [Orders PO-2017, 2033-I and PO-2056-I]

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.

### **Representations of the parties**

The appellant has not referred to any of the listed presumptions of an “unjustified invasion of personal privacy” in section 14(3). Rather, the appellant relies on the consideration listed in section 14(2)(h) on the basis that the information was “supplied by the individual to whom it relates in confidence”. The appellant also argues that the disclosure of the information will result in her being exposed unfairly to pecuniary or other harm within the meaning of section 14(2)(e). The appellant has provided additional confidential representations in this regard which I am unable to describe further in this order.

In support of its decision to disclose the information in the records which is objected to by the appellant, the City states that:

- Many of the records at the Niagara Falls Cemetery Office are open and available to members of the public for research, personal interest or general interest and therefore there is, generally speaking, not a high expectation of confidentiality in the records.

- In addition to 'public documents' there can be correspondence between Cemetery staff and a member of the public regarding specific instructions, directions or questions involving a deceased person, which by their very nature would be personal and where there would be a high expectation of confidentiality.

The original requesters provided me with a great deal of background information about the circumstances surrounding the death and burial of the deceased person, who is their father. The original requesters also indicate that they have received access to the records maintained by the cemetery office in person but were not allowed to have copies. They argue that records of this sort are maintained by the City to be made available to the public, particularly close family relatives of deceased persons and that they are being denied access to documents which are normally disclosed.

### **Findings**

Based on my review of the contents of those portions of the records whose release is opposed by the appellant, I make the following findings:

- Record 1 is a deed to a cemetery plot that was granted to the deceased person's father in 1939. While it contains information about the cost of the plot, I cannot agree that the disclosure of this record would result in an unjustified invasion of the personal privacy of the deceased person's father. The record is now nearly sixty-five years old and involves an individual who has been dead for many years. The City indicates that such records are normally publicly available, which I find to be a consideration strongly weighing in favour of disclosure. The information does not relate to the appellant in any way and was not supplied to the City by the individual to whom it does relate. I find that the disclosure of Record 1 would not result in an unjustified invasion of the personal privacy of the deceased person's father and that section 14(1) has no application to it.
- I accept the position of the appellant that the information in Record 2 whose disclosure is opposed was supplied by her to the institution with an expectation that it would be treated confidentially. As a result, I find that the factor listed in section 14(2)(h) applies to this information. An unlisted factor weighing in favour of disclosure is the fact that the original requesters have already been given access to this document and have quoted from it in their representations. I also find that the consideration in section 14(2)(e) weighing against disclosure is also a relevant factor. I am unable to set forth my reasons for making this finding due to concerns that I have about the confidentiality of the appellant's representations. I find that the factors favouring the non-disclosure of this information outweigh the factor that favours disclosure. As a result, I find that the information described above contained in Record 2 falls within the ambit of the mandatory exemption in section 14(1).

- The only information in Records 3 and 5 which the appellant objects to disclose are the address of the deceased person (Record 3) and her own address (which is the same as the information in Record 3) and her telephone number (Record 5). In my view, it would be an absurd result to deny the original requesters access to the last known address of their father contained in Records 3 and 5. This information is clearly well known to them and I find that its disclosure would not constitute an unjustified invasion of the personal privacy of the appellant. I accept the appellant's submissions that the disclosure of her telephone number would constitute an unjustified invasion of her personal privacy, however. I find that the considerations listed in sections 14(2)(e) and (h) apply to this information and that no factors favouring the disclosure of the appellant's telephone number are present. As a result, I find that the appellant's telephone number contained in Record 5 is exempt from disclosure under section 14(1).

It should be noted that much of the remaining information in the records is the subject of Appeal Number MA-030331-1 and will be addressed in an order to follow shortly.

**ORDER:**

1. I uphold the City's decision to disclose all of Records 1 and 4, as well as the addresses in Records 3 and 5 and order that they be disclosed to the original requesters by providing them with copies by **March 22, 2004** but not before **March 17, 2004**.
2. I do not uphold the City's decision to grant access to the information contained in the fourth line of Record 2 and the telephone number of the appellant in Record 5. This information is not, accordingly, to be disclosed to the original requesters.
3. I reserve the right to require the City to provide me with copies of the records that are disclosed to the appellant pursuant to Order Provision 1.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

February 16, 2004 \_\_\_\_\_