



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1805

Appeal MA-030417-1

Town of Amherstburg



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the Town of Amherstburg (the Town), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The Town received a request for a copy of a complaint letter relating to an alleged home occupation at a specified address. In its decision, the Town denied access to the record, relying on the discretionary exemption in section 8(1) (law enforcement). The requester (now the appellant) appealed the Town's decision.

During mediation of this appeal through this office, certain issues were narrowed or clarified. The Town clarified that it was only relying on sections 8(1)(d) and (e) to withhold access to the record. The application of sections 38(a) and (b) (discretion to refuse requester's own information), in conjunction with sections 8(1)(d), (e) and 14(1)(f) (unjustified invasion of personal privacy), is an issue in this appeal.

I sent a Notice of Inquiry to the Town, initially, inviting it to submit representations on the issues in this appeal. I received no representations from the Town. I also invited the appellant to submit representations and I have not received any representations from him either.

RECORD:

The record at issue is a one-page letter of complaint, signed by an individual (the complainant), which formed the attachment to a Town Building Department Complaint Documentation form.

DISCUSSION:

The first question I must decide is whether the record contains "personal information", for the answer to this determines what sections of the *Act* are relevant to this appeal. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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.

On my review of the record, I find that it contains the personal information of two individuals: the appellant and the complainant. I also find that if the signature of the complainant is severed from the record, the remaining information does not contain any personal information of the complainant. The text of the complaint is typewritten, and there is nothing in it that could serve to identify the complainant.

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government institution. However, under section 38(a), an institution has the discretion to deny an individual access to their own personal information where section 8, among others, would apply to the disclosure of that information.

The Town claims that sections 8(1)(d) and (e) of the *Act* apply to exempt the record from disclosure. Those sections state:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;

The term “law enforcement”, as used in section 8, is defined in section 2(1) of the *Act*. 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) (Orders M-16, M-582 and MO-1795). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal.

In this appeal, the record concerns an alleged infraction of a Town by-law relating to the operation of a business at a residential premise. I find, therefore, that it pertains to a “law enforcement” matter as defined in section 2(1). I also find that the disclosure of the signature of the complainant would reveal the identity of a confidential source of information in respect of the law enforcement matter.

I am not convinced, however, that disclosing the complaint itself would either disclose the identity of the complainant, or disclose information furnished only by the complainant. It is not apparent from the record, and I have no representations to support the conclusion that the information contained in the complaint would serve to identify the complainant, or was furnished *only* by the complainant.

I find, therefore, that the only part of the record that qualifies for exemption under section 8(1)(d) is the signature of the complainant.

I have no representations on the application of section 8(1)(e) and nothing in the materials, including the record, provides any basis for its application. I find that section 8(1)(e) does not apply to the record.

I have found that section 8(1)(d) applies to exempt the name of the complainant from disclosure. Because the record contains the personal information of the appellant, section 38(a) also applies. The section 38(a) exemption is discretionary and permits the Town to disclose information, despite the fact that it could withhold it. In applying section 38(a), an institution must exercise its discretion. On appeal, the Commissioner may determine whether an institution failed to do so. On the basis of the material before me, I am satisfied that the Town exercised its discretion appropriately in refusing access to the name of the complainant.

As I have found the name of the complainant exempt under section 38(a) in conjunction with section 8(1)(d), it is not necessary to consider whether this information would also be exempt under sections 14(1)/38(b). However, I must decide whether these additional exemptions apply to the text of the complaint, which I have found not exempt under sections 8(1)(d)/38(a).

UNJUSTIFIED INVASION OF PERSONAL PRIVACY/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

In addition to section 38(a), section 38(b) also provides an exception to the general right of access to an individual's own information. 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.

Sections 14(1) and 38(b) only apply where the record contains the personal information of an individual other than the requester. In this appeal, I have found that once the name of the complainant is severed from the record, the rest of the record does not contain the personal information of the complainant. I am satisfied, therefore, that it would not be an unjustified invasion of the personal privacy of the complainant to disclose the record with the signature severed.

In conclusion, I find the name of the complainant exempt from disclosure under section 8(1)(d), in conjunction with section 38(a). The rest of the record is not exempt from disclosure.

ORDER:

1. I order the Town to disclose the record to the appellant, with the exception of the signature of the complainant.
2. I order disclosure to be made by sending the appellant a copy of the record by no later than July 24, 2004.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Town to provide me with a copy of the information disclosed to the appellant pursuant to this order.

Original signed by _____

Sherry Liang
Adjudicator

June 23, 2004 _____