



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1825

Appeal MA-040051-1

Hearst Planning Board



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NATURE OF THE APPEAL:

The Hearst Planning Board (the Board) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a letter sent to an identified individual on a specified date.

The Board responded to the request by indicating that, in accordance with the requirements of the *Act*, the individuals who received the letter (the affected parties) were being given the opportunity to make representations as to their views on the disclosure of the record. After receiving the representations of the affected parties (through their solicitor), the Board issued a decision denying access to the record.

The Board's decision stated that it was denying access to the record on the basis of the exemptions in section 8(2)(a) (law enforcement) and section 14(1) (invasion of privacy), with reference to the presumptions in sections 14(3)(b) and (f) and the factors in sections 14(2)(d) and (e). The Board also claimed that the request was frivolous or vexatious under section 5.1 of the *Act*.

The requester (now the appellant) appealed the Board's decision.

During mediation, the Board agreed to remove the claim that the request was frivolous or vexatious. Mediation did not resolve the remaining issues, and this file was transferred to the adjudication stage of the process.

I sent a Notice of Inquiry to the Board and the affected parties, initially, identifying the issues and inviting the parties to provide representations in response. I did not receive representations from either the Board or the affected parties.

I then sent the Notice of Inquiry to the appellant, and the appellant provided representations in response to the Notice.

RECORD:

The record at issue is a one-page letter addressed to the affected parties, including a one-page attachment.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, and includes the following specific types of information:

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (h) 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;

The Board denied access to the record on the basis that the disclosure of the record would result in the unjustified invasion of the privacy of the affected parties. The affected parties also did not consent to the disclosure of the information.

The appellant takes the position that the record does not contain the personal information of the affected parties. The appellant states:

We take the position that there is no personal information in the document as defined in section 2(1) of the *Act*. We have not seen the document so it is difficult to describe precisely what is in it. However, our understanding is that the correspondence deals with the positioning of buildings on a residential lot. We are assuming that the only information that is provided is whether or not in the opinion of the Planning Board the existing distances from the building to the lot line are in compliance with the existing by-laws. "Personal Information" as defined in section 2(1) of the *Act* would appear to be far more personal in nature than the location of buildings on a lot. To extend the definition to include such information would be to exaggerate the common sense approach to a reasonable interpretation of "personal information".

I have reviewed the record at issue, which consists of a letter written to the affected parties, and a one-page attachment.

Based on my review of the record, I am satisfied that it contains the personal information of the affected parties. The letter is addressed to the affected parties and therefore contains their address for the purpose of paragraph (b) of the definition. Furthermore, the letter identifies and summarizes various activities that have occurred involving the affected parties. It therefore falls under paragraph (h) of the definition because it contains the names of the affected parties appearing with other information relating to them.

Accordingly, I find that the record contains the personal information of the affected parties. It does not contain the personal information of the appellant.

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.

As the affected parties did not consent to the disclosure of the record, the only exception which may apply in the present appeal is that set out in 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.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy (see, for example, Order MO-1212).

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) of the *Act* 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) or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that contains personal information which clearly outweighs the purpose of the section 14 exemption. [See Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution 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.

In its decision letter, the Board referred to the presumptions in section 14(3)(b) and (f), as well as the factors listed under sections 14(2)(d) and (e) of the *Act*. In his submissions, the appellant argues that the presumptions in sections 14(3)(b) and (f) are not relevant in this appeal. Furthermore, the appellant refers to the factors in sections 14(2)(a), (d), (e), (f), (g), (h) and (i) and argues that access to the record should be granted. These sections read:

(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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

...

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

...

- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The appellant's representations

Section 14(2)(a)

The appellant states:

This section is particularly relevant to this inquiry. The appellant has no way to determine whether or not the Board is carrying out its function in respect to the enforcement of municipal by-laws. We expect that the correspondence outlines the Board's views as to the enforcement of the bylaw, and it would be in the

public interest for the public to be able to know whether or not the Board is fulfilling its function in respect to the enforcement of municipal by-laws.

In order for section 14(2)(a) to apply in the circumstances of an appeal, it must be established through evidence provided by the appellant, and following a review of the relevant records, that disclosure of the personal information found in these records is desirable for the purpose of subjecting the activities of the institution to public scrutiny. [See Order P-828]

In this appeal, the appellant is seeking information concerning the affected parties. Other than his statement set out above, the appellant has not provided me with any other evidence that the disclosure of the personal information found in the record is desirable for the purpose of subjecting the activities of the institution to public scrutiny. There is no other evidence suggesting that the public has any interest in this matter, nor that the public scrutiny of the activities of the Board regarding its enforcement of municipal by-laws is desirable such that the personal information at issue ought to be disclosed. In my view, the appellant has not provided sufficient evidence to establish that section 14(2)(a) applies as a factor favouring disclosure in these circumstances.

Section 14(2)(d)

The appellant further submits that the consideration listed in section 14(2)(d) is a relevant factor favouring the disclosure of the information. He indicates that, as an individual who also owns property in the area, providing him with the information would assist him in ensuring that his property is and remains in compliance with the relevant by-law.

In order for section 14(2)(d) to be regarded as a relevant consideration, previous orders have determined that an appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

[See Orders P-312 [upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)] and PO-1764]

I adopt the approach taken to the application of section 14(2)(d) in previous orders.

I find that the appellant has failed to establish that the requested personal information is required in order to prepare for a proceeding, nor that any such proceeding exists or is contemplated. Merely identifying that access to the personal information would assist the appellant in ordering his own affairs is not sufficient to engage the factor in section 14(2)(d). Accordingly, the factor favouring disclosure listed in section 14(2)(d) does not apply in the present circumstances.

Sections 14(2)(e), (f), (g), (h) and (i)

The appellant has provided representations on the applicability of these factors in this appeal, essentially taking the position that these factors, which would favour non-disclosure in this appeal, do not apply. Because of my finding that there are no factors favouring disclosure of the record, it is not necessary for me to review in detail the position put forward by the appellant concerning these listed factors.

Findings

I find that the appellant has not demonstrated that any of the considerations favouring disclosure from section 14(2), listed or otherwise, are relevant in the circumstances of this appeal.

As identified above, in order to establish that section 14(1)(f) applies, the appellant must show that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. Since no factors favouring disclosure apply, I find that the disclosure of the information contained in the record would constitute an unjustified invasion of the personal privacy of the affected parties. Therefore, the record is exempt under section 14(1).

Having found that the record is exempt under section 14(1), it is not necessary for me to review the possible application of section 8(2)(a) in this appeal.

ORDER:

I uphold the Board's decision to deny access to the record.

Original signed by: _____
Frank DeVries
Adjudicator

August 30, 2004