



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1795

Appeal MA-030378-1

City of Hamilton



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NATURE OF THE APPEAL:

The City of Hamilton (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to information relating to complaints made to the City about a barking dog at the requester's residence. The requester specifically seeks the name of the complainant. The City located several responsive records and granted access to the majority of them. Access to a portion of one record, entitled "Service Request Detail" dated September 19, 2003 was denied on the basis that it is exempt from disclosure under the law enforcement exemption in section 8(1)(d). The undisclosed information consists of the name, address and telephone number of the complainant and a code number relating to a City employee.

The requester, now the appellant, appealed the City's decision to deny access to the undisclosed portions of the record.

During the mediation stage of the appeal, the appellant confirmed that he was only seeking access to the name, address and telephone number of the complainant and not to the other information contained in the record that relates to a City employee. The City also indicated that it was relying on the invasion of privacy exemption in section 14(1), in conjunction with the presumption in section 14(3)(b) (information compiled as part of a law enforcement investigation) and the consideration listed in section 14(2)(f) (highly sensitive information).

Further mediation was not possible and the matter was moved into the adjudication stage of the process. I decided to seek the representations of the City initially. Because it appears that the disclosed portions of the record also contain the personal information of the appellant, I asked the City to refer to the application of sections 38(a) and (b) to the undisclosed information, in conjunction with sections 8(1)(d) and 14(1) respectively. The City submitted representations, which were then shared, in their entirety, with the appellant. The appellant also provided me with representations.

RECORDS:

The sole record at issue consists of the undisclosed name, address and telephone number of the complainant in the two-page "Service Request Detail" document dated September 19, 2003.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

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

...

- (h) 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;

I have examined the records, which consist of a Service Request Detail log setting out the contacts between members of the public, including the appellant, and by-law enforcement staff at the City. The document includes the name, address and telephone number of the complainant. In my view, the name, address and telephone number qualify as personal information as defined in sections 2(1)(d) and (h) of the *Act* (Orders M-138 and MO-1245).

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 body. Section 38 provides a number of exceptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

The City claims that section 8(1)(d) of the *Act* applies to exempt the withheld information in the record from disclosure. This section states:

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

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.

The City submits the following with respect to the application of section 8(1)(d) to the undisclosed information in the record:

The 'Service Request Detail' record relates to an alleged infraction of a municipal zoning by-law and based on my understanding of previous Orders of the Commissioner, ' . . . an institution's process of by-law enforcement qualifies as law enforcement for the purposes of section 2(1) of the *Act*. (*Order M-738*)

When the City receives a complaint in respect of a potential by-law infraction, the complainant's name, address and telephone number and any other identifiers are always maintained as confidential information and are never disclosed. The City

submits that a complainant has a reasonable expectation of confidentiality when lodging a complaint with a Municipal Law Enforcement Officer. Disclosure of the complainant's name, address and telephone number would disclose the identity of a confidential source of information in a law enforcement matter: a violation of a municipal by-law.

Section 2(1) defines the term "law enforcement" as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

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) of the *Act* (Orders M-16 and M-582). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal. The record addresses an alleged infraction of the City's noise by-law [as opposed to a zoning by-law as stated in the City's submissions] and I find, therefore, that it relates to "law enforcement" as defined in section 2(1).

I have reviewed the record and the representations of the parties and find that the disclosure of the name, address and telephone number of the complainant would reveal the identity of a confidential source of information in respect of a law enforcement matter, the investigation of a possible violation of a municipal by-law. I find, therefore, that the undisclosed information about the complainant qualifies for exemption under section 8(1)(d).

As I indicated above, section 38(a) of the *Act* provides the City with the discretion to refuse to disclose the appellant's personal information where section 8 otherwise applies to the information. I find that in the circumstances of this appeal, the undisclosed portions of the record qualify for exemption under section 8(1)(d) and therefore, section 38(a) applies to exempt this information from disclosure.

The appellant argues that he has not been provided with any evidence to demonstrate that the City exercised its discretion to deny him access to the complainant's name. He submits that the City has a policy of "routinely denying requests for information through intentionally abrogating their responsibilities to exercise discretion under the *Act*."

In its representations under section 38(b), the City has provided me with evidence of the reasons behind its decision to exercise its discretion to deny access to the complainant's name, address and telephone number to the appellant. I have reviewed those submissions and find no reason to

disturb the manner in which the City exercised its discretion to deny the appellant access to this information.

Because of my finding with respect to sections 8(1)(d) and 38(a), it is not necessary to consider the possible application of section 38(b) to the record.

ORDER:

I uphold the decision of the City.

Original Signed By: _____

Donald Hale
Adjudicator

_____ May 31, 2004