



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1799

Appeal MA-030330-1

Town of Caledon



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Town of Caledon (the Town) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) made the following request for records relating to a dog belonging to a neighbour:

1. Name of dog owner and type of dog owned (rottweiler);
2. Copy of dog licence issued or confirmation thereof;
3. A letter of history of [the Town's] warnings and contacts to [the] owner of this dog in response to my telephone calls to [the Town] and complaints from others.

The Town issued a decision denying access to the name of the dog owner (the affected person) pursuant to section 14, read in conjunction with section 14(2)(h) (invasion of personal privacy) of the *Act*, stating that revealing this information would constitute an unjustified invasion of personal privacy since it was provided to the Town in confidence. The Town also stated that it appeared that a current dog license had not been issued to a dog at the stated address (part 2 of the request) and that there is no "letter of history" as requested by the appellant (part 3 of the request).

The appellant appealed the Town's decision.

During the mediation stage, the appellant confirmed that he is not appealing the Town's position that there are no records relating to a current dog licence. He also clarified that "letter of history" comprises letters written to the affected person by the Town. The mediator communicated this to the Town, which then issued a new decision letter stating that there are four letters responsive to part 3 of the appellant's request. The Town provided partial access to three of the letters, pursuant to sections 14, read in conjunction with sections 14(2)(h) and 14(3)(b). A fourth letter was withheld in full also pursuant to sections 14, read in conjunction with sections 14(2)(h) and 14(3)(b). The four letters are also responsive to part 1 of the appellant's request.

Further mediation was not possible and the file was transferred to inquiry.

I first sought and received representations from the Town. The Town agreed to share its non-confidential representations with the appellant. In its representations the Town indicates that it had requested representations from the affected person regarding the release of his personal information. Prior to seeking representations, I received a letter from the Town in which it indicates that the affected person does not consent to the release of his personal information, specifically his name. In addition, the Town advised that it had reconsidered its decision regarding the severance of information relating to the issuance of a dog tag, initially withheld pursuant to section 14. The Town stated that it has issued a new decision letter in which it

released information previously withheld. The Town forwarded a copy of this decision letter along with copies of the records that contain the released information to this office. Accordingly, the information relating to the issuance of a dog tag is no longer at issue. Only the affected person's name and the names of his family members remain at issue under section 14. I then sought representations from the appellant. The appellant was provided with a copy of the Town's non-confidential representations. The appellant submitted representations in response.

RECORDS:

The following four records remain at issue:

Record #	Description	Withheld in full or Severed	Sections of the Act
1	Letter dated January 2, 2001 (2 pages)	Severed	14
2	Letter dated March 1, 2001 (2 pages)	Severed	14
3	Letter dated May 28, 2002 (1 page)	Severed	14
4	Letter dated September 2, 2003 (2 pages)	Severed	14

DISCUSSION:

PERSONAL INFORMATION

The exemption under section 14 applies only to information that qualifies as "personal information", as defined under section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual [paragraph (c)], the individual's address [paragraph (d)] and 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 [paragraph (h)].

The Town indicates that the information severed from the records meets the definition of personal information under paragraph (h) as it includes the name of the affected person and appears with other personal information relating to that individual, specifically his address.

The appellant does not address this issue directly. His representations are focused on his desire to acquire the information at issue so that he can pursue legal action against the affected person and perhaps others for, among other things, the loss of enjoyment of his property due to the behaviour of the dog.

Based on my review of the records and the Town's representations, I am satisfied that the records contain the personal information of the affected person, as well as his home address and other information about him relating to issues between him and the Town involving the dog.

The records also contain the names and home address of the affected person's family members, which constitutes these other individuals' personal information.

INVASION OF PRIVACY

Introduction

Where an appellant seeks the 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 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).

In applying section 14(1)(f), sections 14(2), (3) and (4) 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.

In this case, the Town is relying on the presumption at section 14(3)(b) to support its decision to deny access to the information at issue. That section reads:

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

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;

If the section 14(3)(b) presumption applies, disclosure constitutes an unjustified invasion of privacy [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Although neither party made representations on the application of section 14(3)(b), I find that it applies. On my review of the records, it is clear that the personal information was compiled as

part of an investigation into the affected person's possible violation of the Town's Canine Control By-law 93-90, for allowing his dog to run at large and for failure to obtain a dog licence. Contravention of the by-law is an offence under the *Provincial Offences Act* and, upon conviction, the guilty party may be subject to a fine of up to \$5,000.00.

It is not clear whether quasi-criminal proceedings were commenced. However, whether or not they were commenced does not have a bearing on this issue since section 14(3)(b) only requires that there be an investigation into a possible violation of law (Order PO-1849).

While the appellant has not specifically raised the application of any of the factors in section 14(2), his representations strongly hint at the application of section 14(2)(d), suggesting that the information is relevant to a fair determination of the appellant's rights. However, having found that section 14(3)(b) applies, I am precluded from considering any of the factors weighing for or against disclosure under section 14(2), because of the *John Doe* decision.

In conclusion, due to the application of section 14(3)(b), I find that the information does not fit within the section 14(1)(f) exception. Therefore, the information remaining at issue is exempt under section 14.

ORDER:

I uphold the Town's decision that the withheld portions of the records at issue qualify for exemption under section 14 of the *Act*.

Original Signed By: _____
Bernard Morrow
Adjudicator

_____ June 15, 2004