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

ORDER MO-1872

Appeal MA-040084-1

City of Toronto

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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records maintained by the Fire Department relating to two fire incidents that occurred at a single, specified address. The requester also sought access to any fire violation or inspection reports relating to this property, where the requester is a tenant.

The City located responsive records and granted access to them, in part. Access to the undisclosed information was denied on the basis that it was exempt from disclosure under the invasion of privacy exemption in section 14(1) of the *Act*.

The requester, now the appellant, appealed this decision. During the mediation stage of the appeal, the appellant narrowed the scope of the request to include only certain severed information contained in pages 47, 50 and 53. This severed information consists of the unit numbers where inoperable smoke alarms were discovered in the building.

I sought and received the representations of the City, which were then shared with the appellant, along with a Notice of Inquiry. I did not receive any submissions from the appellant.

RECORDS:

The information at issue consists of the undisclosed portions of pages 47, 50 and 53 consisting of the unit numbers of those apartments where inoperative smoke alarms were found.

DISCUSSION:

PRELIMINARY ISSUE – RESPONSIVENESS OF THE RECORDS

I note that the request specifies that access is sought only to records relating to the address of the building where the appellant resides. Two of the records identified as responsive to the request, Records 50 and 53, clearly contain information about only that building. Record 47, however, contains information about inspection results for another building. In my view, Record 47 contains information that is not reasonably related to the appellant's request and I will not, accordingly, address it further in this decision.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. "Personal information" is defined in section 2(1) of the *Act* to mean information about an identifiable individual. In circumstances where individuals are not specifically named, this office has found that in order to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The City submits that the two responsive records contain the personal information of the tenants who occupy the units identified by number, as this information represents their address. It takes the position that the information qualifies as "personal information" within the meaning of the definition of that term in section 2(1)(d), which states as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > the address, telephone number, fingerprints or blood type of the individual,

The City states that the unit numbers "can be easily linked to other identifying information such as the name of the individual" and, for this reason, the unit numbers qualify as the personal information of the tenants occupying the units. It then goes on to rely on the findings of Adjudicator Anita Fineberg in Order P-1168 in which she held that:

> The Rent Roll (pages 46-57) contains a listing of the apartment numbers, tenants' names, and the dollar amounts for the last month's rent, the April unit rent, parking charges, total rent and the difference between the last month's rent and the April total for each apartment. In my view, information concerning the amount of rent and other charges is personal information. Even with the removal of the tenants' names, the dollar figures are linked to an apartment number. It is a relatively simple matter for anyone to use these apartment numbers to identify the unit occupants. This is especially true for an individual such as the appellant who is another tenant in the building.
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> In Order P-230, Commissioner Tom Wright stated:
>
> > I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.
>
> Applying this reasoning to the Rent Roll, I find that there is a reasonable expectation that the tenants can be identified from their unit numbers. Accordingly, even if the names of the tenants are removed, the information contained in this record constitutes their personal information.
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> The same analysis applies to group three of the records, the rent surveys (pages 167-429). If the appellant were provided with only the unit numbers of those individuals who returned the surveys, the tenants themselves could be identified.

The City concludes this portion of its representations by adding that:

> . . . since the appellant is a tenant in the building, he can easily identify the unit occupants from the [unit] numbers. The City submits therefore that the information at issue meets the definition of 'personal information' in section 2(1) of the *Act*.
>
> The personal information is that of individuals other than the appellant.

In Order PO-2265, Assistant Commissioner Tom Mitchinson made the following finding with respect to whether unit numbers of apartments in a specific building constitute the personal information of the occupiers of those units. He found that:

> In this appeal, the appellant is seeking the street address, city, postal code and specific unit number that is subject to an application before the Tribunal. In my view, if all of this address-related information is disclosed, it is reasonable to expect that the individual tenant residing in the specified unit can be identified. Directories or mailboxes posted in apartment buildings routinely list tenants by unit number, and reverse directories and other tools are also widely available to search and identify residents of a particular unit in a building if the full address is known. Accordingly, I find that the full addresses of units subject to Tribunal applications consist of the "personal information" of tenants residing in those units, as contemplated by paragraph (d) of the definition.

In the present appeal, the appellant is aware of the street address, city and postal code of the building, as he specified it in his request. I adopt the reasoning of the Assistant Commissioner in Order PO-2265 and conclude that the unit numbers contained in Records 50 and 53 constitute the personal information of the tenants who reside there within the meaning of section 2(1)(d). I note that the unit numbers in Records 50 and 53 do not include that of the appellant.

Having concluded that the records contain personal information, I must now determine whether their disclosure would constitute an unjustified invasion of personal privacy under section 14(1).

INVASION OF PRIVACY

General principles

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. In the circumstances, it appears that the only exception that could apply is paragraph (f).

Section 14(1)(f) states:

> 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.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be "an unjustified invasion of privacy under section 14(1)(f). I find that none of the exceptions in section 14(4) apply and the appellant has not claimed the application of the "public interest override" provision in section 16 of the *Act*.

The appellant did not provide me with any representations. In his correspondence with this office during the intake and mediation stages of the appeal, the appellant has not referred specifically to any considerations, listed or otherwise, under section 14(2) that favour the disclosure of the personal information in the records to him. However, in his letter of appeal and throughout the mediation of this matter, the appellant reiterated his need for the undisclosed personal information in the records in order to ensure that his safety concerns are brought to the attention of the building's management. In my view, this gives rise to the possible application of the factor in section 14(2)(b).

The City refers to the application of section 14(2)(f) to the information, arguing that its disclosure, when taken together with other information found in the records, could "reasonably cause personal embarrassment and undue stress to the occupants" and that it qualifies as "highly sensitive" for the purposes of section 14(2)(f).

Sections 14(2)(b) and (f) read:

> 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,
>
> (b) access to the personal information may promote public health and safety;
>
> (f) the personal information is highly sensitive;

The appellant has not provided any evidence to substantiate his argument that the disclosure of the unit numbers "is vital to the safety concerns being addressed to [the Building's Management] and its Board of Directors". In Order MO-1664, I addressed the application of the consideration listed in section 14(2)(b) to personal information that is referable to an identifiable individual as follows:

> In my view, the appellant has failed to demonstrate that the disclosure of the information sought in the record will promote public health or safety in any real or demonstrable way. This section is intended to address records that contain information about public health or safety issues rather than personal information about a particular individual who the appellant may view as being a risk to public safety. I find that section 14(2)(b) has no application in the circumstances of this appeal.

I find that the appellant has not provided sufficient evidence, nor is it apparent from the information at issue, that the disclosure of the unit numbers will promote public safety or health in some real or demonstrable way. The information in the records has been provided to the management of the building who will presumably use it to improve the safety of the tenants who live there. The disclosure of the unit numbers to the appellant is not, therefore, necessary to ensure that this safety issue is addressed. Accordingly, section 14(2)(b) has no application to the personal information at issue in this appeal.

In the absence of any factors favouring the disclosure of the personal information in Records 50 and 53 under section 14(2), I find that its disclosure would constitute an unjustified invasion of the personal privacy of the tenants of the identified units under section 14(1). As a result, I find that the information is exempt under that section.

ORDER:

I uphold the City's decision to deny access to the unit numbers in Records 50 and 53.

November 24, 2004

Donald Hale
Adjudicator