



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1922**

**Appeals MA-040351-1 and MA-050012-1**

**City of Mississauga**



Tribunal Services 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/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEALS:**

The City of Mississauga (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records containing information related to a named charitable organization (the affected party). Specifically, the requester sought access to "...a copy of the licence application and the financial reports and any other reports filed in support of this application for the past 2 years...", as well as "...Any other information...as to the operation of these Break Open Tickets and how a non-profit organization gets on a list to receive 'Charity Funds'...".

Prior to making a decision, the City sought representations from the affected party under section 21 of the *Act*. The City received submissions from the affected party objecting to the disclosure of any of the information contained in the records.

The City issued decision letters to the requester and the affected party, along with an Index of Records describing the 13 records identified as being responsive to the request. The City determined that it would grant the requester partial access to 11 of the records and deny access to the other two records in their entirety. In support of its decision to deny access, the City originally relied on the mandatory exemptions in section 14(1) (invasion of privacy) for all the records and section 10(1)(c) (third party information) for three of the records. In its representations submitted during the adjudication stage of the appeal process, the City applied the section 10(1)(c) exemption to additional records.

The affected party appealed the City's decision to disclose any of the information contained in the records to the requester and this office opened a third party appeal, designated as Appeal Number MA-040351-1. Subsequently, the requester also appealed the City's decision on the basis that he ought to have been granted access to all of the records and this office opened Appeal Number MA-050012-1.

During mediation, the requester agreed to remove Records 1 and 13 from the scope of his appeal. As a result Records 1 and 13 are not at issue in either Appeal MA-040351-1 or MA-050012-1. As no other issues could be resolved, the files were moved to the adjudication stage of the process. I decided to seek the representations of the parties who are resisting disclosure of the records initially and forwarded a single Notice of Inquiry to the City and the affected party in Appeal Number MA-050012-1 and the City and the appellant in Appeal Number MA-040351-1. I received representations from the City only and shared them, in their entirety, with the original requester in Appeal Number MA-040351-1 who is the appellant in Appeal Number MA-050012-1. I received submissions from this party as well.

This order will dispose of all of the issues in Appeals MA-040351-1 and MA-050012-1.

## **RECORDS:**

Records 2-12 remain at issue. They are listed in the Index of Records as follows:

2. Charitable Questionnaire (1 page)
3. Waiver of By-laws (1 page)
4. Letters Patent (5 pages)

5. Financial Statements – December 32, 2003 (5 pages)
6. Minutes of Annual General Meeting (3 pages)
7. Police Criminal Record Data Request for Directors of Corporation (12 pages)
8. Budget – 2001, 2002 (2 pages)
9. Break Open Ticket Licence Application (3 pages per file x 10)
10. Lottery Licence (1 page per file x 10)
11. Letter of Approval and Amendment to License (2 pages per file x 10)
12. Break Open Tickets Lottery Report (8 pages per file x 10 files)

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **General principles**

In order to determine whether the invasion of privacy exemption in section 14(1) of the *Act* may apply to the undisclosed information in the records, it is necessary to decide whether it contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature,

and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The City submits that the records contain personal information relating to various identifiable individuals in their personal, as opposed to some professional, capacity as officers or volunteers with the charity in question. For this reason, the City submits that the information, comprised of signatures, home addresses and telephone numbers (Records 2 to 12), occupation (Record 4), criminal record information (Record 7) and financial information (Record 12), qualifies as "personal information" within the meaning of section 2(1).

### **Findings**

I find that the information contained in Record 4 does not meet the criteria for "personal information" under section 2(1)(b) as it does not relate the "employment history" of the individuals named in the document, as required by that section. The information simply indicates the individual's occupation without containing further information about their tenure or places of employment within that occupation. As such, I cannot agree that the information meets the criteria for "personal information" set out in section 2(1)(b). However, I find that this information qualifies as "personal information" under section 2(1)(h) as it includes both the individual's name and his or her occupation, which I find qualifies as "personal information" about that person.

I find that the information contained in Record 7, the Police Criminal Records Data Request form relating to each of the individuals named therein, clearly qualifies as their "personal

information” within the meaning of section 2(1)(b) as it relates to the existence or the absence of a “criminal history” for each individual.

In addition, I find that the names of individuals who received payments for various services provided to the affected party charity, along with the amounts paid which are listed in Record 12, do not qualify as information relating to financial transactions for the purposes of section 2(1)(b). However, I find that this information qualifies as “personal information” within the definition of that term in section 2(1)(h). Record 12 includes the individuals’ names and the fact that they received payment for a service rendered to the affected party charity, which I also find to constitute their “personal information” since it is recorded information that is about an identifiable individual.

In addition, I find that the names, signatures, home addresses and telephone numbers of the directors of the affected party that are listed at various locations in Records 2 to 12 also constitute the personal information of these individuals under section 2(1)(d).

The remaining information in the records does not qualify as “personal information” within the meaning of section 2(1) and cannot, therefore, fall within the ambit of the section 14(1) exemption.

## **INVASION OF PRIVACY**

### **General principles**

Where a requester seeks the 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).

The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be “an unjustified invasion of privacy” under section 14(1)(f). If any of paragraphs (a)-(h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion under section 14(1) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

## **Representations of the parties**

The City indicates that the presumptions in sections 14(3)(d) (employment history) and (f) (financial history and creditworthiness) apply to certain discrete portions of the records. In addition, the City argues that:

. . . in a previous order (Order M-663), wherein a request was made for reports submitted by charitable organizations in support of break-open ticket licenses, it was determined that the disclosure of personal information (name, address telephone numbers) of officers of a charitable organization constituted an unjustified invasion of personal privacy and should not be released.

The City also submits that the consideration listed in section 14(2)(h), that the information was supplied in confidence, applies to the personal information in the records. It notes that the names, home addresses, telephone numbers and employment information were supplied to the City as part of the documentation in support of its licensing process. It indicates that this information is always kept confidential and that "it is reasonable for charitable organizations to expect that the personal information of volunteer members of an organization would not be disclosed." It goes on to add that the "criminal record search of the directors of the charitable organization is also a requirement of the licensing process" and that this information is "highly confidential and sensitive" within the meaning of sections 14(2)(f) and (h).

The appellant/original requester, who is seeking access to the information, does not address this issue in his representations. I did not receive any submissions from the appellant/affected party who is resisting the disclosure of this information.

## **Findings**

I find that the presumptions in sections 14(3)(d) and (f) do not apply in the circumstances of these appeals. Record 4 contains information relating to the type of employment engaged in by three of the directors of the affected party which operates the charitable organization. I find that this information does not represent their "employment history" for the purposes of section 14(3)(d) but rather simply indicates the occupation of each of these individuals in a very general way. In addition, I cannot agree that the information in the records falls within the ambit of section 14(3)(f) as it does not describe the creditworthiness or financial history of the individuals who were paid certain amounts. Instead, the information relates only to single transactions each individual may have had with the corporation operating the charitable organization. This is not the type of information that falls within the ambit of the presumption in section 14(3)(f).

As noted above, the appellant in Appeal Number MA-050012-1, who was the original requester in Appeal Number MA-040351-1, did not address the application of the section 14(1) exemption to the information that the City wishes to withhold from the records. I have not, accordingly, been provided with any representations respecting the application of any considerations under

section 14(2) that might weigh in favour of a finding that the release of this information would not result in an unjustified invasion of personal privacy under section 14(1). Similarly, the appellant in Appeal Number MA-040351-1, who is the affected party in Appeal Number MA-050012-1, has not provided me with any evidence to support a finding that the disclosure of the remainder of the information contained in the records would constitute an unjustified invasion under section 14(1).

In the absence of any representations or evidence that would lead to a different conclusion, I find that the disclosure of the personal information contained in the records and described above would result in an unjustified invasion of personal privacy under section 14(1). Accordingly, I uphold the City's decision to deny access to the personal information in Records 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 as this information is exempt under section 14(1). The remaining information contained in the records is not exempt under section 14(1).

### **THIRD PARTY INFORMATION**

The City takes the position that certain information contained in the records that relates to the financial activities of the affected party charity is exempt from disclosure under the mandatory exemption in section 10(1)(c), which states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

result in undue loss or gain to any person, group, committee or financial institution or agency; or

Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 10(1) to apply, the parties resisting disclosure, in this case the City and the affected party, must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

### **Part 1: type of information**

The City argues that certain information submitted by the affected party charity in support of its license application that is contained in Records 2, 3, 4, 5, 8, 9 and 12, and the Lottery License and Letter of Approval in Records 10 and 11, constitutes “financial information” about its operations and “commercial information” related to the use of funds and services provided by the affected party charity within the meaning of section 10(1).

Previous orders of the Commissioner’s office have defined these terms as follows:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

I have carefully reviewed the contents of each of the records and make the following findings with respect to their contents:

- Record 5, the affected party charity’s financial statements for the year ending December 31, 2003,
- Record 6, an extract from the minutes of the Annual General Meeting of the affected party charity held on January 10, 2001,
- Record 8, the budgets for the years 2002 and 2001, and
- Record 12, the revenues and expenditures contained in the lottery reports and addenda,

relate to the buying and selling of goods and services by the affected party charity, thereby qualifying as “commercial information” regardless of the fact that it is a non-profit organization. I further find that the information also relates to money and its use, thereby qualifying as “financial information” for the purposes of part one of the test under section 10(1). In addition, I specifically find that the information relating to the affected party charity’s bank account that is contained in Record 12 does not represent either commercial or financial information for the purposes of the first part of the section 10(1) test.



## **Part 2: supplied in confidence**

The requirement that it be shown that the information was “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties [Order MO-1706]. Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

The City argues that the information contained in Records 2, 3, 4, 5, 8, 9 and 12 was “supplied” by the affected party charity to the City as a condition of the City granting a licence. The City concedes that the licensing agreement is silent as to whether this information is to be kept confidential but submits that it is reasonable for charities to assume that this is the case. The City concedes that Records 10 and 11 do not contain information that was “supplied” to the City by the affected party charity.

I have reviewed the contents of the records described above and find that the financial and commercial information contained in Records 5, 6, 8 and 12 was supplied to the City by the affected party charity with a reasonably-held expectation that it would be treated in a confidential fashion. As a result, I find that part two of the test under section 10(1) has been satisfied with respect only to this information.

## **Part 3: harms**

To meet this part of the test, the institution and/or the third party must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

The City argues that the disclosure of the affected party charity’s bank account number, banking transit number, bank branch and bank location contained in Record 12 “could result in undue loss or gain to the charitable organization should an individual use this information to access charity bank accounts and funds.” The City goes on to concede that the remaining portions of the records do not contain information whose disclosure could reasonably be expected to give rise to the harms contemplated by section 10(1)(c). It states that the exemption cannot, therefore, apply to this information.

The appellant/original requester who is seeking access to the information states that all of the banking information referred to by the City is available on the cheques that are issued on behalf of the charity.

I have found above that the banking information contained in Record 12 is not information that qualifies as either financial or commercial information for the purposes of section 10(1) of the *Act*. As all three parts of the test under section 10(1) must be satisfied for the exemption to apply, I find that the banking information in Record 12 is not exempt from disclosure under the third party information exemption. The City acknowledges that the third part of the test under section 10(1) has not been met with respect to the other information in Records 5, 6, 8 and 12. Without any additional submissions from the other party resisting disclosure, in this case the affected party charity, I am unable to find that the information falls within the ambit of the exemption under section 10(1). Accordingly, I find that this exemption has no application to the information contained in the records.

**ORDER:**

1. I uphold the City's decision to deny access to the personal information contained in Records 2, 3, 4, 5, 6, 7 (in its entirety), 8, 9, 10, 11 and 12.
2. I uphold the City's decision to disclose the remaining portions of Records 2, 3, 4, 5, 8, 9, 10, 11 and 12 to the appellant in Appeal Number MA-050012-1 (the original requester in Appeal Number MA-040351-1).
3. I order the City to disclose to the appellant in Appeal Number MA-050012-1 (the original requester in Appeal Number MA-040351-1) those portions of Records 2, 3, 4, 5, 6, 8, 9, 10, 11 and 12 that do not contain personal information by providing him with copies by **June 2, 2005 but not before May 30, 2005**.
4. In order to verify compliance with Order Provision 3, I reserve the right to require the City to provide me with a copy of those records which are disclosed to the appellant.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ April 28, 2005