



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1906**

**Appeal MA-040144-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

This is an appeal from a decision of the City of Toronto (the City), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The decision arises out of a request for information about the amount of debt owed by the requester as a result of a sponsorship default. The requester sponsored a named individual's immigration to Canada and, as a result of his sponsorship default, is obliged to repay any social assistance benefits paid to the individual. The request therefore relates to the amount of social assistance benefits the named individual received.

The City decided to release the information requested, and notified the named individual that it intended to disclose this information. The named individual (now the appellant) objected to release of the information, and filed this appeal, on the basis that the information is exempt under section 14(1) of the *Act* (invasion of privacy). The information has not been released pending the resolution of this appeal.

Mediation did not resolve the appeal, and it was transferred to the inquiry stage of the process. This office sent a Notice of Inquiry to the City and the requester initially, inviting them to provide representations on the issues. In response to the Notice of Inquiry, the requester provided a blank copy of the Sponsorship Agreement form provided by Citizenship and Immigration Canada. The requester refers to the consent portion of that form in support of his position that the appellant has consented to the disclosure of any personal information to him as her sponsor. This office provided the City with a copy of the letter and the form referred to by the requester, and invited the City to address the issue of whether or not this constituted consent for the purpose of section 14(1)(a) of the *Act*.

The City then also provided representations in response to the Notice of Inquiry. In the circumstances of this appeal I decided not to seek the representations of the appellant.

## **RECORDS**

The record at issue consists of a list of the payments made by the City to the appellant, and contains the appellant's name, date of payment, benefit month, amount paid and type of payment.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The personal privacy exemption in section 14(1) applies only to information that qualifies as personal information. Under section 2(1) of the *Act*, personal information is defined 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;

Furthermore, 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].

The City provided representations in support of its position that the information contained in the record is the personal information of the appellant. It states:

... the severed information falls under the definition of personal information as it contains information set out in paragraphs (b), (c) and (h) of the definition of personal information. In particular, the record indicates that the appellant is in receipt of social assistance benefits and the amount of those benefits. The City submits that the personal information relates to the appellant only, not the requester.

I accept the position put forward by the City, and find that the requested information is the personal information of the appellant, as it contains her name along with information describing the payments made to her, including the dates of the payments, the amount paid and the type of payment.

Notwithstanding the requester's position that he requires the information in the record for the purposes he identifies, in my view the record does not contain the personal information of the requester as defined under section 2(1). I have also considered whether the record may contain the requester's personal information based on his position that it contains the amount of assistance the appellant received, and thereby would reveal the amount of debt he owes to the Government. In my view, regardless of the fact that the record may indirectly provide the requester with information concerning financial obligations he may have taken on, I find that this is not sufficient to support a finding that the record contains the requester's personal information for the purpose of the *Act*.

Accordingly, I find that the record contains the personal information of the appellant only.

### **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. The only sections which may apply in the circumstances of this appeal are sections 14(1)(a) and (f), which read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

...

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

#### **Section 14(1)(a)**

Section 14(1)(a) contains an exception to the section 14(1) mandatory exemption, by providing that personal information can be disclosed if the individual consents to the disclosure.

#### ***Representations of the parties on section 14(1)(a)***

The City and the requester take the position that the appellant has consented to the release of the requested information, based on the consent clause found in the sponsorship agreement she entered into when she immigrated to Canada.

The requester sponsored the appellant when she immigrated to Canada in 2002. Under the terms of the sponsorship agreement, a sponsor commits to ensure that the sponsored person will not

need to apply for social assistance benefits. The requester identifies that due to the breakdown of the sponsorship arrangement, the appellant did apply for and receive social assistance. The requester then indicates that the amount of the assistance she received became his debt to the Government as a result of the obligations he agreed to in the sponsorship agreement.

The requester also states:

Please note that all family class immigrants have an obligation to sign a Sponsorship Agreement before the entry visa is granted. This agreement outlines the rights and responsibilities of a sponsor and a sponsored person. The last paragraph of the Agreement refers to **authorization for disclosure of personal information**. It says:

The sponsored person consents to the release to the sponsor or co-signor of information concerning social assistance the sponsored person or his or her family members applied for or received during the validity period of the sponsorship undertaking.

...

It means that [the appellant] **has already given** her consent for disclosure of the requested information. Otherwise, she would not have entered Canada.

Along with his representations, the requester provides a blank copy of the Citizenship and Immigration Canada's Sponsorship Agreement which contains the clause referenced above. He confirms that the original, signed agreement is available at Citizenship and Immigration Canada.

The City also provided representations in support of its view that the record can be disclosed to the requester on the basis of section 14(1)(a). In support of its position, the City summarizes the steps required to be taken by sponsors and sponsored persons immigrating to Canada, and reviews the various commitments and obligations undertaken by the sponsor and the sponsored person.

The City also refers to the wording of a different clause in the sponsorship agreement that states:

An undertaking is unconditional and may not be terminated. Under no circumstances does the granting of Canadian citizenship, divorce, separation or relationship breakdown, financial deterioration or moving to another province cancel the undertaking.

On the basis of this clause, the City takes the position that the sponsored individual (the appellant in this case) is not able to retract her consent to release the relevant information to the sponsor (the requester in this case).

The City also confirms that it regularly receives requests from sponsors for a statement of the social services benefits paid to a family member or other relative that they have sponsored to come to Canada. The City states:

When the individual provides a written consent, the information is disclosed pursuant to section 32 of the *Act*. However, when the individual cannot provide a written consent, he or she is asked to make a formal access request.

The City then reviews the circumstances resulting in this appeal, which can be summarized as follows:

- 1) the requester sponsored the appellant's immigration to Canada;
- 2) since 1997, an agreement containing the clauses referred to above must be signed before the appellant could come to Canada, and the appellant would have entered such an agreement as a condition of entering the country;
- 3) the appellant is in receipt of social service benefits during the validity period of the agreement;
- 4) the requester/sponsor has an obligation to repay these benefits under the Sponsorship Agreement;
- 5) the appellant would have signed the agreement, which contains the consent to the disclosure of the relevant information to the sponsor/requester; and
- 6) the consent cannot be retracted.

### ***Findings***

Previous orders have established the requirements necessary for section 14(1)(a) to apply. In Order PO-2033, former Assistant Commissioner Mitchinson stated:

In order for consent to operate as an exception to the mandatory section 14(1) exemption, it must be in writing, and provided to the institution that has custody and control of the records containing the individual's personal information. The individual can provide this consent either directly to the institution or indirectly through this office on appeal.

Similarly, in Order PO-1723, Adjudicator Cropley stated as follows with respect to the similar provision in section 21(1)(a) of the provincial *Freedom of Information and Protection of Privacy Act*:

In my view, section 21(1)(a) requires that consent be provided under the *Act*, that is, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request. The affected persons' disclosure of their personal information to the appellant was done in the context of their dispute and does not, in my view, extend to disclosure under the *Act*. (PO-1723)

These orders suggest that the consent required under section 14(1)(a) is specific to the operation of the *Act*.

With respect to whether a consent under section 14(1)(a) of the *Act* can be retracted, Adjudicator Hale addressed this issue in Order MO-1751-I. In that appeal the appellant provided the institution (the Ottawa Police Service) with a copy of a consent, signed by the affected person whose information was contained in the records, granting the appellant the right to access all of the affected person's personal information maintained by the Police. In the course of processing the request, the Police contacted the affected person, who indicated that he no longer consented to the disclosure of his personal information. Adjudicator Hale summarized the positions of the parties as follows:

The Police take the position that the "authorization" dated August 19, 2001 that was provided by the appellant with the current request was nearly two years old at the time it was submitted. They further argue that the affected person made his views respecting disclosure known more recently when he declined to consent to the disclosure of his personal information to the appellant in February 2002.

The appellant submits that the August 19, 2001 authorization remains valid.

Adjudicator Hale went on to make the following finding with respect to section 14(1)(a):

Two diametrically opposed statements have been submitted as evidence by the Police and the appellant from the affected person respecting his position on the disclosure of his own personal information to the appellant. The appellant argues that the August 19, 2001 authorization from the affected person remains valid and ought to be treated as this individual's consent to the disclosure of his personal information to the appellant. The Police submit that the response which they obtained following a notification to the affected person under section 21(1) upon receipt of request 02-039 ought to be considered to represent the affected person's position on the disclosure of his own personal information to the appellant.

In light of the contradictory evidence provided by the parties respecting the affected person's views on disclosure and the very sensitive nature of much of the information contained in the records, I cannot accept the August 19, 2001 "authorization" as representative of the affected person's present position on disclosure of his personal information to the appellant. The affected person has more recently (February 11, 2002) declined to allow the release of his personal information to the appellant.

Adjudicator Hale consequently found that the exception in section 14(1)(a) did not apply in the circumstances of his appeal.

I have considered the orders set out above along with the approach taken to the section 14(1)(a) exception outlined in them. In the circumstances of this appeal, and in light of the appellant's specific appeal of the decision to disclose her information to the requester, I find that the exception in section 14(1)(a) of the *Act* does not apply.

As a preliminary note, neither the City nor this office was provided with the actual signed sponsorship agreement relied on by the requester, although the requester confirms that the original agreement is available at Citizenship and Immigration Canada. Notwithstanding the fact that I do not have a copy of the signed agreement, I will review the issue of whether such a signed agreement (assuming one were to be provided to me) would constitute the appellant's consent in the circumstances of this appeal, given her current position that she does not consent to disclosure.

In this appeal a formal request was made under the *Act* for the personal information of the appellant. As no consent to disclosure was provided with the request, the City notified the person whose personal information was at issue (the appellant) pursuant to the notification requirements in section 21 of the *Act*, that it intended to disclose the record. Upon receipt of the notification, the appellant appealed the City's decision to this office. Without deciding on the validity of the consent at the request stage, in my view, as soon as the appellant appealed the City's decision to disclose the record, any consent that might have existed to the disclosure of the personal information of the appellant was retracted, and the appellant no longer consented to the disclosure of the information for the purpose of section 14(1)(a) of the *Act*.

In accordance with Adjudicator Hale's decision in Order MO-1751-I, I find that a consent to disclose information under section 14(1)(a) of the *Act* can be retracted by the person providing the consent.

The City has relied on the following wording, found in the sponsorship agreement, in support of its position that the sponsored individual (the appellant) is not able to retract her consent:

An undertaking is unconditional and may not be terminated. Under no circumstances does the granting of Canadian citizenship, divorce, separation or relationship breakdown, financial deterioration or moving to another province cancel the undertaking.

It is not within the scope of my review of the issues in this appeal to determine whether or in what circumstances the consent provided under Citizenship and Immigration Canada's Sponsorship Agreement may or may not be retracted. However, in my view the clause referred to by the City in support of its position does not clearly relate to the consent provision of the agreement. It refers to "an undertaking", which appears to be referred to elsewhere in the agreement as the "sponsorship undertaking" entered by the sponsor. Furthermore, the sponsorship agreement itself also contains a separate clause identifying legal and financial obligations for breaches of it.



In the circumstances of this appeal under the *Act*, based on the position taken by the appellant that she does not consent to the disclosure of her personal information, I find that the exception in section 14(1)(a) has no application. I will now consider whether the exception in section 14(1)(f) applies.

**Section 14(1)(f)**

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) 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) of the *Act*, or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption. [Orders PO-2017, 2033-I and PO-2056-I]

Neither the City nor the requester have provided representations on whether the information in the record falls within any the presumptions found in section 14(3).

Based on my review of the record, I find that it fits within the presumption found in section 14(3)(c), which states:

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

relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

The record contains the appellant's name and the amount of the benefits received by the appellant through social assistance. Accordingly, I find that its disclosure is presumed to constitute an unjustified invasion of the personal privacy of the appellant.

The requester refers to his interest in accessing the record to assist him in an ancillary court proceeding, thereby raising one of the factors favouring disclosure found in section 14(2). However, as noted above, as a result of the decision in *John Doe*, it has been well-established that a presumption under section 14(3) cannot be rebutted by any of the factors under section 14(2), either alone or taken together.

None of the parties have raised the possible application of section 16 to the record, and the exceptions in section 14(4) do not apply. Accordingly, I find that the record is exempt from disclosure under section 14(1).

As an additional note, nothing in this decision prohibits the requester from using alternative processes which may be available to him to access the requested information for the purposes he identifies.

**ORDER:**

I find that the information contained in the record qualifies for exemption under section 14(1) of the *Act*, and I do not uphold the City's decision to grant access to the record.

Original Signed by:  
Frank DeVries  
Adjudicator

February 28, 2005