



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1951**

**Appeal MA-050031-1**

**Municipality of Clarington**



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## **NATURE OF THE APPEAL:**

A resident of a street in Bowmanville submitted a request to the Municipality of Clarington (the Municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the name, address and telephone number of a complainant in relation to “enforcement” on that street.

The Municipality identified two records containing the name, address and telephone number of an individual who had made complaints to its Municipal By-Law Enforcement Division relating to enforcement of by-laws in relation to the street in question. The records are a document entitled “confidential occurrence report” and an e-mail message. The Municipality denied access to the records pursuant to the discretionary exemption in section 8(1)(d) of the *Act* (law enforcement).

The requester, now the appellant, appealed the Municipality’s decision.

During the course of mediation, the mediator, appointed by this office to assist in resolving the issues, notified the complainant of the appeal as an affected party and sought consent to disclose his or her identity to the appellant. The complainant did not consent.

The Municipality subsequently issued a revised decision letter advising that the responsive information was also being withheld pursuant to the mandatory exemption at section 14(1) (invasion of privacy) in conjunction with the factor at 14(2)(h) (information supplied in confidence) of the *Act*. Accordingly, the mediator added the application of section 14(1) of the *Act* as an issue in dispute in this appeal.

As mediation did not resolve all the issues, this appeal entered the adjudication stage. In analyzing the issues, I have considered whether the records contain the personal information of the appellant as well as the personal information of any other individuals. The reason for this is that if the records at issue contain the appellant’s personal information, he has a right of access to that personal information under section 36(1)(b), subject to the discretionary exemptions in sections 38(a) and (b).

Initially, I provided the Municipality with a Notice of Inquiry setting out the facts and issues in this appeal and invited the Municipality to provide representations. I received representations from the Municipality and sent them in their entirety to the appellant with a Notice of Inquiry. The appellant provided representations in response.

## **RECORDS:**

The records at issue in this appeal are a document entitled “confidential occurrence report” and an e-mail message.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

**Do the records contain “personal information” as defined in section 2(1) and, if so, to**

**whom does it relate?**

**General principles**

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. 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].

### **Analysis and Findings**

Both records at issue contain the name, address, and telephone number of an individual other than the appellant and the fact that the individual made complaints about alleged by-law violations. Therefore, the records contain the personal information of that individual.

I have no evidence that either of the records contains the personal information of the appellant. Therefore, section 36(1)(b) does not apply.

### **PERSONAL PRIVACY**

Having found that both records contain the personal information of the complainant, I must therefore consider whether disclosure of the records at issue, containing the name, address, and telephone number of the complainant to the appellant are exempt under section 14(1) of the *Act*.

#### **Does the mandatory exemption at section 14(1) apply to the information at issue?**

##### **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.

The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14.

#### **Do any of the exceptions in paragraphs (a) to (e) of section 14(1) apply?**

If the information fits within any of paragraphs (a) to (e) of section 14(1), the exemption does not apply.

Sections 14(1)(a) to (e) provide:

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;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
  - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
  - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
  - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; ...

I find that none of the paragraphs in section 14(1)(a) to (e) apply to the records in question.

**Would disclosure not be “an unjustified invasion of privacy” under section 14(1)(f)?**

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).

**Do any of paragraphs (a) or (b) of section 14(4) apply?**

If either paragraph (a) or (b) of section 14(4) applies, disclosure is not an unjustified invasion of privacy under section 14.

Section 14(4) provides:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

The appellant does not rely on section 14(4), and based on the evidence neither of the paragraphs of section 14(4) applies to the records in question.

**Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?**

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure is presumed to be an unjustified invasion of privacy under section 14, subject only to sections 14(4) and 16 (the public interest override) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Section 14(3) provides, in part:

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
  - (b) 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;

In this case, the personal information in both records was compiled and is identifiable as part of an investigation into a possible violation of law, as it relates to enforcement of one or more municipal by-laws. Therefore, section 14(3)(b) applies, and disclosure of the information is presumed to be an unjustified invasion of privacy unless sections 14(4) or 16 apply. I have found, above, that section 14(4) does not apply. The appellant has not alleged that section 16 applies and there is no evidence on which I could find that section 16 applies.

Accordingly, I find that disclosure of the records at issue, containing the name, address, and telephone number of the complainant in the records would be an unjustified invasion of personal privacy, and the exception to the section 14(1) exemption found at section 14(1)(f) does not apply. This information is therefore exempt from disclosure under section 14(1).

Under the circumstances, it is not necessary for me to consider the application of section 8(1)(d).

**ORDER:**

I uphold the decision of the Municipality not to disclose the information at issue in this appeal.

Original signed by: \_\_\_\_\_  
John Swaigen  
Adjudicator

\_\_\_\_\_ August 5, 2005