



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2068-F

Appeal MA-040278-1

Kingston & Frontenac Housing Corporation



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This Final Order disposes of the remaining issues in Appeal Number MA-040278-1. It follows my Interim Order MO-2047-I in this same appeal, issued on April 27, 2006.

BACKGROUND AND NATURE OF THE APPEAL:

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the Kingston & Frontenac Housing Corporation (the Housing Corporation) received a request from an individual (the requester) through her legal representative, for the file relating to her tenancy with the Housing Corporation. She signed an authorization directing the disclosure of any information in her tenancy file to her representative, and this authorization was submitted with the request.

The rental unit relating to the requester's tenancy is in a subsidized housing complex. She resides in the unit with her young children. The request arose out of an allegation that other individuals were residing in her rental unit. The requester's representative explains in his representations that if the Housing Corporation is justified in finding that other individuals are residing with the appellant, an overpayment might be declared. He says this could lead to the loss of the appellant's right to subsidized housing in Ontario, under section 7(1) of the regulations to the *Social Housing Reform Act*.

In its initial decision letter the Housing Corporation identified records responsive to the request and denied access to them in full under the exemption in section 38(b) of the *Act* (personal privacy).

Through her representative, the requester (now the appellant) appealed the decision.

After conducting an inquiry and receiving representations from the Housing Corporation and the appellant, I issued interim Order MO-2047-I. In it I found that certain information the Housing Corporation had severed from a number of records did not qualify for exemption and I ordered it to disclose this information. I also upheld the Housing Corporation's decision to withhold access to the severed portions of certain records, and to other records in their entirety.

In addition, I found that information the Housing Corporation severed from records numbered 26 to 27, 28, 54, 62, 65, 67, 95, 160, 170 to 171, 172, 175, 178, 179, 180, 181, 182, 183, 184 and 185 and the personal information in the records numbered pages 69, 97 to 98, 99, 173 and 174 fell within the section 38(b) exemption. That exemption was discretionary and, for the reasons set out in the order, I found that the Housing Corporation took into account non-relevant factors in the exercise of its discretion. I therefore included a provision in Order MO-2047-I requiring the Housing Corporation to re-exercise its discretion under section 38(b) of the *Act*, in respect of the withheld portions of records numbered 26 to 27, 28, 54, 62, 65, 67, 95, 160, 170 to 171, 172, 175, 178, 179, 180, 181, 182, 183, 184 and 185 and the personal information in the records numbered pages 69, 97 to 98, 99, 173 and 174. I ordered the Housing Corporation to take into account all of the relevant factors and circumstances of this case and to use as a guide the principles for the exercise of discretion that I had set out in the order. I further ordered the Housing Corporation to provide me with an outline of the factors considered in exercising its discretion. In response, the Housing Corporation provided me with representations concerning its exercise of discretion. I then gave the appellant an opportunity to review the submissions of the

Housing Corporation and to provide representations on whether the Housing Corporation properly exercised its discretion. The appellants choose not to file any representations.

DISCUSSION:

EXERCISE OF DISCRETION

The section 38(b) exemption is discretionary, and permits an institution to disclose information despite the fact that it could withhold it. An institution must exercise its discretion. On appeal the Commissioner may determine whether the institution failed to do so. In addition the Commissioner may find that the institution erred in exercising its discretion.

In Order MO-2047-I, after explaining the above, I wrote the following:

I may find that the Housing Corporation erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In these cases, I may send the matter back to the Housing Corporation for an exercise of discretion based on proper considerations [Order MO-1573].

Relevant considerations

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected

- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information

In Order MO-2047-I, I found that:

In its initial representations the Housing Corporation requests that the information not be disclosed because it has commenced legal action against the appellant's solicitor and the underlying landlord and tenant matter that gave rise to the request is at an end. In my opinion these are not relevant factors for the Housing Corporation to have taken into account in the exercise of its discretion. ...

In its representations, the Housing Corporation's general manager stated that the Housing Corporation maintained its position not to disclose the records remaining at issue because they are all internal control documents for the purpose of income testing and eligibility determination of rent geared to income assistance. Furthermore, she stated that the records include references to individuals who have not authorized disclosure of their personal information including their income, income sources, names and addresses. She asserted that the Housing Corporation errs on the side of caution in the exercise of its discretion.

Having reviewed the rationale provided by the Housing Corporation for exercising its discretion against disclosure of the records remaining at issue, with the appellant filing no responding representations, I am satisfied that the Housing Corporation has taken into account the particular circumstances of this case, and that there is nothing improper in the exercise of its discretion not to disclose the withheld information.

ORDER:

I uphold the decision of the Housing Corporation to deny access under section 38(b) of the *Act* to the withheld portions of records numbered 26 to 27, 28, 54, 62, 65, 67, 95, 160, 170 to 171, 172, 175, 178, 179, 180, 181, 182, 183, 184 and 185 and the personal information in the records numbered pages 69, 97 to 98, 99, 173 and 174.

Original signed by: _____
Steven Faughnan
Adjudicator

July 25, 2006 _____