



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2021**

**Appeal MA-040266-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The requester filed an access-to-information request with the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), seeking access to the name of an individual who had complained to the City about matters relating to the requester's property.

The City issued a decision letter indicating that the requested information is found in its Municipal Licensing and Standards Division's complaint and inspection records. The City granted partial access to the records, withholding portions of the records pursuant to the exemptions in sections 7(1) (advice to government) and 14(1) (personal privacy) of the *Act*.

The requester (now the appellant) appealed the City's decision to this office. The mediator assigned to the file raised the possibility that the discretionary exemptions in sections 38(a) and (b) of the *Act* may be relevant to the appeal, because the records contain information about both the appellant and other individuals.

The severed portions of some pages of the records contain information about several individuals, including the name, address and telephone number of the individual (the affected person) who complained to the City about matters relating to the appellant's property. The mediator contacted the affected person, who did not consent to the disclosure of his or her personal information to the appellant.

The appeal was not settled in mediation and was moved to the adjudication stage. Initially, I sent a Notice of Inquiry to the City and the affected person and invited them to provide representations on specific issues, including the application of sections 38(a) and (b) to the records at issue. Both the City and the affected person submitted representations in response to the Notice of Inquiry.

I then sent a Notice of Inquiry to the appellant, along with the non-confidential representations of both the City and the affected person. The appellant then submitted representations.

## **RECORDS AND EXEMPTIONS:**

The responsive records identified by the City are investigation cards. These cards are filled out by the City's Municipal Standards and Licensing staff when the City receives and investigates a property maintenance or zoning by-law complaint.

The information remaining at issue in this appeal is the severed portions of the following pages of the investigation cards:

<b>Page Number</b>	<b>Description (severed portions)</b>	<b>Exemptions</b>
1	City inspector's handwritten notes	Section 38(b)
2	City inspector's handwritten notes	Sections 38(a) and 7(1); section 38(b)
3	Complainant's name, address and telephone number	Section 38(b)

5	Vehicle license plate number and province	Section 38(b)
7	Complainant's name, address and telephone number	Section 38(b)
10	Complainant's name, address and telephone number	Section 38(b)

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **General principles**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain “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, 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 representations of the parties**

Pages 1 and 2 of the records contain the handwritten notes of a City inspector. The severed information in these records relates to an individual other than the affected person. This individual is not identified by name but the record contains information that could reasonably be expected to identify this individual. In its representations, the City submits that the severed information in these notes constitutes personal information, as defined in paragraphs (b) and (h) of the definition of that term in section 2(1) of the *Act*.

Pages 3, 7 and 10 contain the affected person's name, address and telephone number. The City submits that this information constitutes the affected person's personal information:

It is the City's submission that in the context of a complaint about the condition of another person's property, that has lead to an investigation and possibly by-law enforcement measures, the name, telephone number and address of the individual complainant is the complainant's personal information within the meaning of [paragraphs] (d), (g) and (h).

Page 5 contains information from the license plate of a vehicle, which the City submits is personal information:

As a result of the complaint, a City Inspector attended the premises in question and noted on the Card a vehicle license plate and the province of the vehicle ... in the driveway. This information was collected in the event that it may be evidence of the use of the premises. It is the City's submission that a license plate number and the province noted on the license plate is personal information under [paragraph] (c) of the definition of "personal information" in MFIPPA.

The affected person's counsel submits that the information in the severed portions of the records about his client constitutes that individual's personal information. In her representations, the appellant does not address whether the records contain personal information.

## **Findings**

Several pages of the records contain the appellant's personal information, including her name and address (pages 1 and 5) and other information pertaining to her and her property (pages 1, 2, 3, and 5). Since all the records were generated as a result of allegations against the appellant, I am satisfied that, in a general sense, all of them also contain her personal information.

The severed information in the inspector's notes on pages 1 and 2 contains references to an unnamed individual. In my view, it is reasonable to expect that this individual may be identified if the severed information on both pages 1 and 2 is disclosed because these pages reveal this individual's place of residence and other descriptive information. Consequently, I find that pages 1 and 2 of the records contain the personal information of this individual.

The name, address and telephone number of the affected person on pages 3, 7 and 10 fall within the types of personal information set out in paragraphs (d) and (h) of definition of that term in section 2(1) of the *Act*. It is reasonable to expect that the affected person may be identified if this information is disclosed. Therefore, I find that this severed information constitutes the personal information of the affected person.

The severed information on page 5 contains information from the license plate of a vehicle, including the license plate number and province. Previous orders of this office have established that a license plate number that belongs to an identifiable individual can be considered the "personal information" of that individual, as it constitutes "an identifying number ... assigned to the individual," as defined in paragraph (c) of the definition. (Orders MO-1863 and MO-1917.) In my view, the identifying information on the license plate includes both the issuing province and the plate number and from this, the individual's name may also be determined. As a result, I find that the license plate number and province together constitute the personal information of the vehicle owner.

In summary, I find that the records contain the personal information of both the appellant and other individuals.

## **INVASION OF PRIVACY**

### **General Principles**

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the "unjustified invasion of personal privacy" threshold under section 38(b) is met.

If the presumptions contained in paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to constitute an unjustified invasion of privacy, unless the information falls within the ambit of the exceptions in section 14(4), or if the "public interest override" in section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In the circumstances, it appears that the presumption at section 14(3)(b) may apply. This section states that:

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

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;

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

### **The representations of the parties**

The City submits that the City Clerk, as head, in exercising her discretion under section 38(b) of the *Act*, weighed the requester's right of access to her personal information against another individual's right to protection of their privacy. The head considered sections 14(2), (3) and (4) of the *Act* in determining whether disclosure of the information would constitute an unjustified invasion of privacy.

With respect to the presumption in section 14(3)(b) of the *Act*, the City states that it investigated a complaint that there was debris on the appellant's property, in contravention of the City's Municipal Code, Chapter 623, entitled "Property Maintenance." The City later investigated another complaint that the appellant's property was being used as a rooming house, contrary to North York By-law No. 7625. The City submits that the personal information of the complainant and the license plate information were collected and are identifiable as part of an

investigation into a possible violation of law, pursuant to section 14(3)(b) of the *Act*.

The affected person submits that disclosure of his or her personal information would constitute a presumed invasion of privacy within the meaning of section 14(3)(b) of the *Act*:

Such information was compiled and is identifiable as part of an investigation into a possible violation of law, namely the appellant's possible Municipal Licensing and Standards violation. Disclosure of such information to the appellant is entirely unnecessary to prosecute the violation or continue the investigation. In fact, our position is that there is no legitimate reason at all why the appellant should be entitled to receive such information, and no legitimate purpose for which such information could be used by the appellant.

The appellant submits that she has the right to know the identity of the individual who filed complaints with the City about her property. She states that the complaints may be motivated by "racial hate, anti-Semitism and discriminatory harassment" and that withholding this information from her allows people "not to be accountable." Furthermore, she submits that she has the right to see any accusations, true or false, that have been filed against her with the City.

### **Findings**

In determining whether the personal information at issue is exempt under section 38(b), I have reviewed the records and considered the representations of the parties.

The City's Municipal Standards and Licensing Division investigated a complaint that there was debris on the appellant's property, in contravention of the City's Municipal Code, Chapter 623, entitled "Property Maintenance." The City later investigated another complaint that the appellant's property was being used as a rooming house, contrary to North York By-law No. 7625. During the course of these investigations, the City's inspectors recorded information in investigation cards, including the personal information of an unnamed individual on pages 1 and 2; the affected person's name, address and telephone number on pages 3, 7 and 10; and the personal information of the vehicle owner on page 5.

In my view, it is clear that this personal information, which relates to individuals other than the appellant, was compiled and is identifiable as part of an investigation into a possible violation of the City's property maintenance and zoning bylaws. Therefore, I find that section 14(3)(b) of the *Act* applies to the personal information at issue.

Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe*, cited above]. I have considered the application of the exceptions contained in section 14(4) of the *Act* and find that the personal information at issue does not fall within the ambit of this section.

The appellant submits that the complaints may be motivated by “racial hate, anti-Semitism and discriminatory harassment” and that withholding this information from her allows people “not to be accountable.” However, she does not provide any evidence to support these submissions, nor does she link them to the “public interest override” at section 16 of the *Act*. In my view, these submissions provide no basis for finding that sections 14(3)(b) and 38(b) do not apply. Moreover, the appellant’s interest in this information is of a private nature, and even if the section 16 public interest override had been argued, I would find that it does not apply.

In summary, section 14(3)(b) applies to the personal information at issue, which means that disclosure of this information is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) and the “public interest” override at section 16 are not applicable in the circumstances of this appeal. Therefore, I find that the personal information at issue is exempt under section 38(b).

The City submits that section 38(a) applies to the severed information on page 2 of the records. However, given that I have found that this information is exempt under section 38(b), it is not necessary for me to assess whether this information is also exempt under section 38(a).

### **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 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 either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

The City submits that this office should uphold its exercise of discretion:

In this appeal, the City’s head exercised her discretion in good faith and took into account all of the relevant considerations including the following:

- The purposes of MFIPPA;



- The wording of the relevant exemptions and the interests the exemptions seek to protect;
- The fact that the information the appellant is seeking may be characterized as [her] own information;
- Whether there was a sympathetic or compelling need for the appellant to receive the information;
- The fact that the appellant is an individual;
- The relationship between the appellant and the affected person;
- Whether the disclosure will increase public confidence in the operation of the City;
- The nature of the information and the extent to which it is significant and/or sensitive to the City, the appellant or the affected person;
- The age of the information;
- The historic practice of the City in refusing to grant access to the name and telephone number of complainants in the circumstances of this appeal.

The affected person's counsel submits that the City did not err in exercising its discretion to withhold his client's personal information from the appellant. The appellant's representations do not address whether the City erred in its exercising its discretion under section 38(b).

In my view, the City considered the relevant factors in their exercise of discretion and did not consider irrelevant ones. I also note that the City severed and disclosed all personal information in the records that pertains exclusively to the appellant and withheld only the personal information of other individuals. I find that the City's exercise of discretion was proper.

**ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_  
John Higgins  
Senior Adjudicator

February 21, 2006 \_\_\_\_\_