



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2013**

**Appeal MA-050245-1**

**City of Kawartha Lakes**



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## **NATURE OF THE APPEAL:**

The City of Kawartha Lakes (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to any reports prepared by three named Municipal Law Enforcement Officers, with respect to the enforcement of Municipal Smoking By-Law No. 2003-105, following visits they made to the requester's establishment on three occasions. The requester also sought access to the names and addresses of the persons who made the complaints about smoking in her establishment and the dates of the complaints.

The City located a number of responsive records and granted partial access to the reports made by the three identified Municipal Law Enforcement Officers on their visits to the requester's place of business. Access to the name and address of the person(s) who made the complaint was denied, pursuant to section 8(1)(d) (law enforcement) of the *Act*.

The requester (now the appellant) appealed the City's decision.

During the mediation stage of the appeal, the City provided the appellant with further information about the contents of the undisclosed portions of the records and confirmed that the names of two agencies/organizations had been severed from the record. As it appeared that the record also contains the personal information of the appellant, the City raised the possible application of section 38(a) (discretion to refuse requester's own information) of the *Act*, in conjunction with 8(1)(d).

Further mediation was not possible and the matter was moved into the adjudication stage of the process. I sought and received the representations of the City, initially. The non-confidential portions of the City's submissions were provided to the appellant, who also submitted representations.

## **RECORDS:**

The information remaining at issue consists of the undisclosed portion of an MLEO – Occurrence Report recorded on a specified date.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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].

### **The meaning of “about” the individual and “identifiable”**

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].

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.)].

## **Findings**

The City submits that the undisclosed portion of the record contains the personal information of the individual who is identified, as it “is reasonable to expect that the individual would be identified if the information was disclosed”.

The appellant’s representations do not address whether the information qualifies as personal information within the meaning of section 2(1).

I have reviewed the contents of the record containing the undisclosed information at issue and find that it includes the personal information of the appellant and her husband, including their address, telephone number, date of birth and the personal opinions and views of the appellant, as contemplated by sections 2(1)(a), (d) and (e) of the definition of the term “personal information”. These portions of the record were disclosed to the appellant.

I do not agree with the position taken by the City that the undisclosed information contained in the record constitutes the personal information of the individual whose name appears therein. I find that the individual’s name appears not in his personal, but rather, his professional capacity. In my view, there is nothing inherently personal about the information in the record or the context in which it was provided that would require it to be characterized as being “about” this individual. In addition, I find that the disclosure of the information relating to this individual that is contained in the record would not reveal anything of a personal nature about him. Accordingly, I conclude that the record includes only the personal information of the appellant and her husband, as that term is defined in section 2(1).

## **DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION/LAW ENFORCEMENT**

Section 36(1) 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(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

In this case, the City relies on section 38(a), in conjunction with section 8(1)(d), which reads as follows:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

The term “law enforcement” is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 8(1)(e), where section 8 uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In order to establish the application of section 8(1)(d), the City must provide evidence of a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances [Order MO-1416].

### **Representations of the parties**

The City submits that section 8(1)(d) applies to the undisclosed information in the record as it was “prepared as part of the municipality’s investigation into a possible violation of [a municipal by-law].” It goes on to argue that the disclosure of the information from the record “could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter” as the information identifies the confidential informant. It goes on to describe its established practice not to disclose the identities of confidential sources of information respecting by-law enforcement matters in order to ensure that the assistance of these individuals continues. In support of its position, the City provided me with copies of its Municipal Law Enforcement page from its website and a copy of the complaint form. Each of these documents confirms that complainants are assured of confidentiality.

The City also indicates that it is relying on a number of previous decisions of this office in which the discretionary exemptions in sections 38(a) and 8(1)(d) were upheld. The City makes specific reference to the reasoning contained in Orders M-582 and MO-1245.

The appellant submits that she requires the name of the complainant in order to defend herself in court from charges under the pertinent City by-law that have been brought against her. In addition, the appellant raises the possible application of a number of provisions of the *Canadian Charter of Rights and Freedoms* (the *Charter*), the *British North America Act, 1867* (the *BNA Act*) and the disclosure provisions of Part II of the *Act*. She takes the position that these provisions grant to her a right of access to information which will enable her to further her defence of the by-law violation charges by obtaining the name of the complainant.

### **Findings**

I find that the arguments made by the appellant respecting the application of the *Charter*, the *BNA Act* and section 32 of the *Act* are not persuasive. The appellant has not provided me with sufficient evidence to substantiate a finding that her rights to equal treatment under the law have been violated as a result of the City's denial of access to the name of the complainant under section 8(1)(d).

Previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the *Act* (Orders M-16, M-582 and MO-1245). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal. The undisclosed information in the records concern alleged infractions of the City's anti-smoking by-law and I find, therefore, that it relates to a law enforcement matter.

I have reviewed the records and the representations of the parties and find that the disclosure of the information which has not been released from the record would reveal the identity of a confidential source of information in respect of the identified law enforcement matter. I find, therefore, that the undisclosed portion of the record contains information which qualifies for exemption under section 8(1)(d).

As I indicated above, section 38(a) of the *Act* provides the City with the discretion to refuse to disclose the appellant's personal information where section 8 otherwise applies to the information. I have found that certain portions of the record, which have been disclosed to her, contain the appellant's personal information. Accordingly, I must consider whether the record, taken as a whole, is exempt under section 38(a).

I have reviewed the representations of the City with respect to the manner in which it exercised its discretion under section 38(a) not to disclose the complainant's identity to the appellant. Based on those submissions, I find that the City has properly exercised its discretion and the undisclosed portion of the record is exempt under section 38(a).

**ORDER:**

I uphold the City's decision to deny access to the undisclosed portion of the record.

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

\_\_\_\_\_  
January 5, 2006