



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2064

Appeal MA-050353-1

City of Waterloo



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The City of Waterloo (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for copies of all notes, records, statements, photos and other documents relating to an “order to remedy” that was issued by the City’s by-law enforcement department with respect to a property.

The City located six records that were responsive to the request. It issued a decision letter that provided the requester with full access to four records and partial access to two records. It withheld portions of the latter two records pursuant to the mandatory exemption at section 14(1) of the Act (personal privacy). The requester (now the appellant) appealed the City’s decision to this office.

This appeal was not settled in mediation and was moved to adjudication. Initially, I issued a Notice of Inquiry to the City, which submitted representations in response. I then issued a Notice of Inquiry to the appellant, along with the complete representations of the City. The appellant submitted representations in response.

RECORDS

The information remaining at issue is the undisclosed portions of two Service Request forms. The City severed the name and telephone number of the person from whom the City received a by-law violation complaint (the complainant) from the first Service Request form. In addition, it severed the name of an individual who is described as the property owner’s repairman from the second Service Request form.

DISCUSSION:

PERSONAL INFORMATION

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, 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.)].

The City submits that the records contain the personal information of the complainant, as defined in section 2(1) of the *Act*, and that it is reasonable to expect that disclosure of this information would identify the individual. However, it does not address whether the name of the individual who is described as the property owner's repairman is personal information. The appellant's representations do not directly address whether any of the information at issue is personal information.

In my view, the name and telephone number of the complainant fall within the types of personal information set out in paragraphs (d) and (h) of the definition of “personal information” in section 2(1) of the *Act*. Moreover, it is reasonable to expect that this individual may be identified if the information is disclosed. I find, therefore, that the first Service Request form contains the personal information of the complainant.

The name of the individual who is described as the property owner’s repairman is information about that individual in his professional or business capacity, not his personal capacity. I find, therefore, that the name of the repairman on the second Service Request form does not qualify as personal information. Because it is not personal information, the information about the repairman cannot be withheld under the “invasion of privacy” exemption in section 14(1) of the *Act*. As no other exemptions are claimed for it, I will order it disclosed. I will now consider whether the complainant’s information is exempt under section 14(1).

INVASION OF PRIVACY

The personal information severed by the City from the first Service Request form relates to an individual other than the appellant. In such circumstances, the mandatory exemption at section 14(1) requires the City to refuse to disclose this information to the appellant unless one of the exceptions at sections 14(1)(a) through (f) applies. In my view, the only exception which could apply is section 14(1)(f), which states:

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

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

Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 14(1)(f). Section 14(2) provides factors to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The presumption at section 14(3)(b) of the *Act*

The City submits that the presumption at section 14(3)(b) of the *Act* applies to the name and telephone number of the complainant, because this information was compiled and is identifiable as part of an investigation into a possible violation of law.

The appellant submits that section 14(3)(b) recognizes that the requester would necessarily be entitled to the information as part of the prosecution:

In this case there was a prosecution and requester's entitlement to the information arose out of that prosecution. Once it became apparent that the accuser made false complaints both the investigation and prosecution were terminated. To deny the requester the information surrounding a false complaint would produce an absurd result since the requester is clearly entitled to information with respect to a bona fide complaint.

Section 14(3)(b) of the *Act* states:

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;

Ontario's Divisional Court has stated that once a presumption against disclosure in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue falls within the ambit of section 14(4) or if the "compelling public interest" override provision at section 14 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

An individual submitted a complaint to the City's by-law enforcement department with respect to a property. The personal information of the complainant, including that individual's name and telephone number, was compiled and is identifiable as part of an investigation into a possible violation of a municipal by-law. Consequently, I find that disclosure of the complainant's name and telephone number is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b) of the *Act*.

The Divisional Court's decision in the *John Doe* case, cited above, precludes me from considering whether the section 14(3)(b) presumption can be rebutted by either one or a combination of the factors set out in section 14(2). However, a presumed unjustified invasion of personal privacy under section 14(3) can be overcome if section 14(4) or the "public interest override" at section 16 applies.

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. Moreover, the public interest override at section 16 does not apply, because the appellant has a private, not a public interest, in seeking the personal information of the complainant.

Accordingly, I find that the name and telephone number of the complainant is exempt under section 14(1) of the *Act* because disclosure of this personal information would be an unjustified

invasion of personal privacy, and the exception to the exemption at section 14(1)(f) does not apply.

Absurd result

The appellant submits that the absurd result principle applies in the circumstances of this appeal:

It would be absurd if persons who themselves instigated a public process that included the laying of charges requiring the giving of evidence could avoid disclosure of the substance of their false accusations.

As noted above, the appellant further submits that it would be absurd to deny it access to information submitted as part of a false complaint, because it would have been entitled to this information if the complaint was legitimate and fully prosecuted.

It is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. Previous orders of this office have found that where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under sections 38(b) or 14(1) of the *Act*, because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

The appellant is not arguing that it originally supplied the complainant's name and telephone number to the City or is otherwise aware of it. Instead, it is asking me to find that the absurd result principle should apply because the appellant would have become aware of the information if different circumstances had existed (i.e., if the complaint was legitimate and fully prosecuted and the complainant was therefore required to give evidence in a public proceeding).

The section 14(3) presumptions, including section 14(3)(b), evince an intention on the part of the legislature to favour the protection of individual privacy over the right to access in specified circumstances. One of the policies underlying the section 14(3)(b) presumption is to provide a high degree of privacy protection, during a law enforcement investigation, to individuals who submit information to public authorities about possible violations of the law. This is meant, in part, to encourage individuals to come forward to report possible breaches of the law and to prevent others from harassing or intimidating them, particularly if an investigation leads to charges and may require a complainant to give evidence before an administrative tribunal or a court of law.

In my view, applying the absurd result principle on the basis that the appellant would have become aware of the identity of the complainant if a full prosecution had occurred, would undermine the purpose of the section 14(3)(b) presumption. It would create a situation in which the identity of an individual who reported a possible violation of the law could be disclosed to the target of an investigation during the investigation phase. This would have the effect of discouraging individuals from reporting possible breaches of the law or giving evidence in possible subsequent proceedings, which would run contrary to the legislature's intention in drafting the section 14(3)(b) presumption.

In short, I find that the absurd result principle does not apply in the circumstances of this appeal, and the name and telephone number of the complainant remain exempt under section 14(1) of the *Act*.

The repairman's name

The City severed the name of an individual from the second Service Request form who is described as the property owner's repairman. As outlined above, I have found that this is information about an individual in his professional or business capacity and therefore does not qualify as personal information, as defined in section 2(1) of the *Act*. Further, the personal privacy exemption at section 14(1) does not apply to this information, because that exemption only applies to personal information, not information about an individual in his or her professional or business capacity. Given that the City has not claimed any further exemptions for the name of the property owner's repairman, I will order that it be disclosed to the appellant.

ORDER:

1. I uphold the City's decision to deny access to the name and telephone number of the complainant on the first Service Request form.
2. I order the City to disclose the name of the property owner's repairman on the second Service Request form to the appellant by **July 28, 2006**.

3. In order to verify compliance with Provision 2 of this order, I reserve the right to require the City to provide me with a copy of the record it discloses to the appellant.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ June 28, 2006