



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2043

Appeal MA-050456-1

County of Norfolk



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NATURE OF THE APPEAL:

The County of Norfolk (the County) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information concerning a complaint made to the County about the requester's cottage property. The requester specifically asked for the following information:

Copy of the report of original "concern" or complaint received by Norfolk County which resulted in the May 2005 inspection ... of the [identified] cottage property.

The County located one responsive record and granted access to portions of it. The County denied access to the name, address, and telephone number of the complainant, and stated as follows in its decision:

Access has been granted to the Bylaw Enforcement complaint issued on your property but personal information has been severed according to section 8(1)(d) of the [*Act*] addressing access to records that would reveal a confidential source.

The requester, now the appellant, appealed the County's decision to deny access to the undisclosed portions of the record.

During mediation, it was determined that because the record may also contain the personal information of the appellant, the discretionary exemptions in sections 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) may apply to the information severed from the record.

Mediation did not resolve the issues in this file, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the County, initially, and received representations in response. I then sent the Notice of Inquiry, along with a severed copy of the County's representations, to the appellant, who also provided representations.

RECORD:

The record remaining at issue is the severed portion of the By-law Enforcement complaint form. The undisclosed information consists of the name, address and telephone number of the complainant only.

DISCUSSION:

Section 2(1) of the *Act* states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
...
- (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;

I have examined the record at issue, which is the By-law Enforcement complaint form. It contains the name and address of the appellant, as well as information about the contacts that have been made between the appellant and a by-law enforcement officer with the County. In addition, the severed information includes the name, address and telephone number of the complainant. In my view, the record contains the personal information of the appellant, as well as the complainant, within the meaning of the definition of that term in sections 2(1)(d) and (h) of the *Act* (Orders MO-1245, MO-1795).

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

General

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

Section 8(1)(d)

The County claims that section 8(1)(d) of the *Act* applies to exempt the withheld information in the record from disclosure. This section states:

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 used in several parts of section 8, and 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)

The term “law enforcement” has been found to apply to a municipality’s investigation into a possible violation of a municipal by-law. [Orders M-16, MO-1245]

In order to establish that information qualifies for exemption under section 8(1)(d), the County must establish 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

The County submits the following with respect to the application of section 8(1)(d) to the undisclosed information in the record:

The release of the severed information in the document in question would identify the name, address and phone number of the person who complained about the appellant’s property. ... By disclosing the full record of the complaint it would identify the name, address and phone number of the person making the complaint against the property of the appellant.

The County identifies later in its representations that the personal information of the complainant was supplied to the County in confidence, and states:

The information was given and collected with full agreement from the complainant with the belief that the information ... supplied would be retained in confidence and not released to the appellant.

The appellant provides representations in support of his position that he ought to have access to the requested information. He also refers to correspondence provided by him to this office earlier in this appeal, which I discuss below.

In his representations the appellant notes that the County appears to be relying on a different by-law than the one it referred to in previous correspondence with him. The appellant also identifies

that he is still awaiting further action by the County with respect to the by-law investigation relating to his property.

In the material provided to this office in his appeal letter and during mediation, the appellant describes the background to his request. He states that he had owned and enjoyed the cottage property in question for many years without receiving any complaints. He then describes the series of incidents and disagreements he has had with certain identified neighbours, with whom he is now engaged in a legal action. He also states that numerous complaints have been made about the state of his property over a short period of time (which he identifies as “frivolous and unfounded for the most part”). He further submits that he believes the complaints were made by his identified neighbours, and that he ought to be entitled to “clear proof” that they are the source of the complaints, to allow him to “properly defend and protect” himself. He further states that the by-law ought not to allow individuals to “hide” behind the anonymity provided by the County in order that certain cottage owners “can persecute and harass their neighbours”. He states that to uphold the denial of access to the identity of the complainant would be unjust and wrong.

The appellant also takes the position that the complaints, including the one relating to the record at issue, are “spurious” and “farfetched”, and that the County has an obligation to verify such claims. He states that this appeal does not relate solely to the identity of the complainant in this single event, but relates to a “concerted series of complaints ... directed at [the appellant] in order to attack and harass [the appellant]”.

With respect to the numerous previous orders of this office which have upheld the confidentiality of the identities of complainants in by-law enforcement matters, the appellant states:

I submit that there is an inherent potential danger in a by-law enforcement complaint process because it is a complaint driven system and is therefore subject to abuse by unscrupulous individuals. Reading [previous orders of this office] it is apparent to me that the rules are weighted in favour of the complainant whereas the rights of the wrongfully accused seem to be ignored and deemed irrelevant.

The appellant also identifies that the decision to deny access under section 8(1)(d) and 38(a) is discretionary.

Findings

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*. I agree with those orders and adopt their findings for the purposes of this appeal. The record in this appeal addresses an alleged infraction of the County’s Property Standards by-law and I find, therefore, that it relates to “law enforcement”, as defined in section 2(1).

I have reviewed the record and the representations of the parties and find that the disclosure of the name, address and telephone number of the complainant would reveal the identity of a confidential source of information in respect of a law enforcement matter - the investigation of a possible violation of a municipal by-law. Although the appellant provides lengthy representations in support of his position that he ought to be entitled to access the requested information, he does not argue that the information would not reveal the identity of a confidential source of information; rather, his representations focus on why he ought to be entitled to access the information in the circumstances of this appeal, and why withholding the information from him would be unjust in this case. These representations relate more directly to the proper exercise of discretion in applying sections 8(1)(d) and 38(a), as opposed to the actual application of the section 8(1)(d) exemption.

Having found that the disclosure of the undisclosed information would reveal the identity of a confidential source of information in respect of a law enforcement matter, I find, therefore, that this information qualifies for exemption under section 38(a) in conjunction with section 8(1)(d).

Exercise of discretion

As noted, sections 8 and 38(a) are discretionary exemptions. When a discretionary exemption has been claimed, an institution must exercise its discretion in deciding whether or not to disclose the records. On appeal, the Commissioner may determine whether the institution failed to do so.

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 such a 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)].

In its representations, the County has provided me with submissions respecting the reasons behind the decision to exercise its discretion to deny the appellant access to the complainant's name, address and telephone number. These reasons include the concern that individuals in general would be discouraged from making complaints if they knew that their identities would be disclosed. The County also identifies possible harassment or litigation that could be brought to bear against complainants if their identities were revealed.

The appellant's arguments in support of his position that he ought to be able to access the information at issue are set out above.

On my review of the representations of the parties, I find no reason to disturb the manner in which the County exercised its discretion to deny the appellant access to this information.

Although the appellant lists numerous reasons why he believes he ought to be able to access the information in the circumstances of this appeal, all of them are predicated upon the assumption that the complainant is a particular individual. Section 8(1)(d) is designed to deny access to the identities of complainants in law enforcement matters. The appellant's own representations support the position that, in law enforcement matters, individuals are entitled to make complaints, but that there also exists an obligation on law enforcement agencies to investigate the complaints for their veracity and validity, and to pursue them only if appropriate. Furthermore, although I accept the appellant's position that there may be some potential danger of false accusations resulting in improper prosecutions that are inherent in a complaint-driven process, the legislature has clearly determined that the identity of a confidential source of information in respect of a law enforcement matter ought to be subject to protection. Based on all of the circumstances, I am not satisfied that the County erred in exercising its discretion not to disclose the information relating to the complainant's identity, and I uphold the County's decision.

Because of my finding with respect to sections 8(1)(d) and 38(a), it is not necessary to consider the possible application of section 38(b) to the record.

ORDER:

I uphold the decision of the County.

Original Signed by: _____
Frank DeVries

_____ April 24, 2006