



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

# **ORDER MO-2058**

**Appeal MA-050434-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to a specified community meeting that the appellant attended on October 18, 2005. Specifically, the requester sought access to the following:

Names only appearing on sign-in page at community meeting (Planning Dept.) held to consider Official Plan and zoning by-law amendments re: [specified address].

The City located the requested record and denied access to it in its entirety under the mandatory exemption in section 14(1) (invasion of privacy) of the *Act*.

The requester, now the appellant, appealed the City's decision.

During the mediation stage of the appeal, the mediator discussed with the City the possible application of the discretionary exemption in section 38(b) of the *Act* as the record appears to contain information which pertains to the appellant, as well as information related to other individuals (the affected persons). Section 38(b), rather than section 14(1), is the relevant personal privacy exemption where a record contains the requester's personal information and that of other individuals (Order M-352). The City reconsidered its decision and granted access to the information contained in the responsive record which pertains to the appellant only and denied access to the remainder of the record pursuant to section 38(b) in conjunction with section 14(1).

As further mediation was not possible, the file was forwarded to the adjudication stage of the appeal process.

This office began the inquiry into this appeal by sending a Notice of Inquiry to the City, initially, seeking its representations. The City responded by providing submissions.

This office also notified the 27 individuals whose names are listed on the record (the affected persons). Three affected persons responded, all of whom indicated that they did not wish their names to be disclosed.

This office then sent a Notice of Inquiry to the appellant enclosing a copy of the City's representations. The appellant also submitted representations in response to the Notice. The file was then transferred to me to conclude the inquiry.

## **RECORD:**

The record at issue in this appeal is a four-page "Community Consultation Meeting" sign-in form listing the names and address of the attendees to the meeting who signed in at the meeting on this form. Only the names of individuals other than the appellant who signed the sheet are at issue.

## **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 if 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].

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 record contains personal information. In particular, the City states that the names on the list are personal information pursuant to section 2(1)(h). The appellant submits that as he only wishes the names of the individuals on the list, without any other information, that he is not seeking personal information.

The record reveals the names of individuals who attended the meeting. One of these individuals is the appellant. Under item (h) of the definition, I am satisfied that disclosure of the name would reveal other personal information about the individual (the fact of attending the meeting). Accordingly, I find that the record contains the personal information of the appellant and other individuals.

### **INVASION OF PRIVACY**

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. I will return to this subject in the discussion of “exercise of discretion”, below.

Sections 14(1) to (4) provide guidance in determining whether an unjustified invasion of personal privacy is established under section 38(b). If any of the exceptions at section 14(1)(a) through (e) applies, disclosure is not an unjustified invasion of personal privacy. Section 14(4) describes information whose disclosure is not an unjustified invasion of personal privacy. In section 14(3), if any of paragraphs (a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). 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 v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767). If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b) [Order P-239]

## Representations of the City

The City relies on the factor favouring privacy protection in section 14(2)(h) (information supplied in confidence), as well as Order M-350, in support of its decision to deny access to the requested personal information. This section states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

In Order M-350, former Commissioner Tom Wright considered an appeal involving the former City of Toronto and a request for copies of a mailing list compiled from sign-in sheets completed at a meeting held by the Planning and Development Department to provide a forum for residents to discuss a development proposed for their neighbourhood. He stated that:

Even assuming that guarantees of confidentiality were not provided at the meeting, this is not a circumstance which weighs in favour of disclosure of personal information.

The fact that it was a public meeting does not mean that an individual has no interest in limiting further disclosure or dissemination of his/her personal information [Orders 180 and M-68]. Accordingly for the purpose of this appeal, the public nature of the meeting is not a circumstance which weighs in favour of disclosure.

Although anyone attending the meeting might have been able to determine the identity of the other individuals who were present, this does not mean that the names and addresses and phone numbers of those attending should subsequently be disclosed to the appellant in the form of a list.

In this order, former Commissioner Wright upheld the former City's decision to deny access to the personal information under 14(l) of the Act. I note, however, that in Order M-350, the record did not contain the requester's information and the exemption applied was the mandatory section 14(1). In that case, the information could only be disclosed if the evidence established that it would *not be* an unjustified invasion of personal privacy to do so. Under 38(b), however, it must be established that disclosure *would be* an unjustified invasion of personal privacy in order for the exemption to apply.

The City submits that the circumstances of the current appeal are very similar to those in the appeal in Order M-350. The City submits that:

... since the issuance of that order (Order M-350), the (amalgamated) City has taken additional steps to ensure the confidentiality of the personal information

contained in sign-in sheets through guidelines prepared by the Corporate Access and Privacy Office for City staff. These guidelines state, inter alia, that sign-in sheets must not be left unattended at any time; individuals attending public meetings must not be allowed to copy or photograph information from a sign-in sheet; all program areas must use an approved template, all sign-in sheets are optional; ballots are recommended but where a single sign-in sheet is used, the sheet must be continuously monitored by staff who must obscure previously recorded personal information by using a piece of paper to block viewing, and so on.

The City submits that given these steps to ensure the confidentiality of the names (and other personal information) of the attendees on the sign-in form, section 14(2)(h) of the *Act* would apply to this information.

### **Representations of the Appellant**

The appellant's representations explain the reason for seeking access to the names on the sign-in form from the meeting held by the City of Toronto Planning Department to consider the proposed Official Plan and Zoning Bylaw amendments relative to a specified address. The appellant submits that he was seeking these names to facilitate a group appeal to the Ontario Municipal Board of the City's decision concerning the Official Plan Amendment and Zoning Bylaw, filed in the name of an individual such as himself. The deadline for the filing of this appeal was December 28, 2005.

The appellant attached to his representations a copy of the Notice of Adoption of Official Plan Amendment dated December 8, 2005. This Notice provides details of the City of Toronto's enactment and amendments of the by-laws which were the subject of the meeting of October 18, 2005. This Notice provides that any person (including a group of persons) may file an appeal of the City's decision.

As noted above, if any of the exceptions at section 14(1)(a) through (e) applies, disclosure is not an unjustified invasion of personal privacy. The appellant raised the possible application of sections 14(1)(c) and (d). Section 14(1)(c) mandates disclosure of personal information "collected and maintained specifically for the purpose of creating a record available to the general public". Section 14(1)(d) mandates disclosure of personal information "if an Act of Ontario or Canada expressly authorizes the disclosure".

In particular, the appellant maintains that under the *Planning Act*, community consultation meetings are public and, therefore, the names of the attendees to the meetings are of a public nature. The appellant refers to section 34(12) of the *Planning Act* which states:

Before passing a by-law under this section, except a by-law passed pursuant to an order of the Municipal Board made under subsection (11) or (26), the council shall ensure that sufficient information is made available to enable the public to understand generally the zoning proposal that is being considered by the council

and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed.

The appellant goes on to state that:

This public meeting was part of the normal planning process under the *Planning Act*. There is nothing confidential or private about it. Everyone present at the meeting was there to listen to, or participate in, a sharing of views relative to public issues. As admitted in the City's submission, the signing of the sign-in sheet was entirely optional. Nowhere on the sign-in sheet was it suggested that, at any time, the City might opt to refuse a request for disclosure of names by anyone in attendance. In fact, at all times during the meeting, and for at least 15 minutes thereafter, the sign-in sheet lay on a table available for examination and/or copying by any and all persons...The planning process provided by the *Planning Act* and Ontario Municipal Board practice contemplates the possibility of an appeal by a group, filed in the name of an individual such as myself. Group appeals allow costs savings by groups. In this case, any such possibility was effectively thwarted by the City's refusal to release to me, in timely fashion, the names on the sign-in sheet...

## **Analysis and Findings**

### ***Section 14(1)(c) (public record) and (d) (authorized by an Act)***

I have reviewed Orders MO-1506 and P-516, which the appellant relies on in support of his representations concerning the public nature of the meeting at which the sign-in form was utilized. In these cases, the adjudicators ordered the disclosure of publicly-circulated petitions. Neither of these decisions deals with sections 14(1)(c) or (d) or, in the case of Order P-516, with the equivalent provisions of the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*).

In Order MO-1506, former Assistant Commissioner Mitchinson found that the affected persons signed a petition voluntarily and lent their support to a matter of some public concern to them. The petition asked the Township to take into account the petitioners' objection to the position taken by an association in appealing certain Township decisions to the Ontario Municipal Board. There was nothing on the face of the petition to indicate that it was provided in confidence. The Assistant Commissioner found that in signing the petition and providing personal information on this petition, the affected persons implicitly consented to disclosure of their personal information. He made this finding under the section 14(1)(a) exception, which relates to consent. He did *not* find that the circumstances would justify a conclusion that the record was collected and maintained specifically for the purpose of creating a record available to the general public, as contemplated under section 14(1)(c), nor did he find that an Act of Ontario or Canada expressly authorized the disclosure as contemplated under section 14(1)(d).

The aspect of Order P-516 relied on by the appellant involved Inquiry Officer Asfaw Seife's assessment of whether the record was supplied in confidence under section 21(2)(h) of the

provincial *Act* (the equivalent of section 14(2)(h) of the *Act*). He found that there was nothing on the petition that was at issue in that appeal to indicate that it was signed in confidence or submitted to the Ministry in confidence. Inquiry Officer Seife agreed with the views of Inquiry Officer John McCamus in Order P-171 where he stated that petitions are signed by the signatories voluntarily and the signatories take a public stand with respect to the issue being petitioned for.

In my view, the evidence before me does not demonstrate that the record was collected and maintained specifically for the purpose of creating a record available to the general public. Rather, it was a way of obtaining contact information of individuals who consented to being contacted by the Ward Councillor about the planning issue addressed at the meeting. It does *not* contemplate disclosure to individuals such as the appellant for purposes of a group appeal, nor disclosure to the public generally. Even if I were persuaded that the record was not intended to be confidential, more evidence would be required to take the extra step of concluding that the record was collected with an intention of general public availability as required under section 14(1)(c). I find that this section does not apply.

Section 14(1)(d) requires that a statute “expressly authorizes” the disclosure. In other words, specific types of personal information must be expressly described in the statute and the disclosure of that type of information must clearly be authorized. As well, there must be a reasonable basis for concluding that the information at issue is included in the type of information whose disclosure is authorized. Section 34(12) of the *Planning Act*, referenced by the appellant, does not meet these criteria. It does not refer to personal information, even generically. Even if it did, I would not be satisfied that the names and addresses of participants in the meeting would “enable the public to understand generally the zoning proposal that is being considered by the council” as contemplated by that section. I find that section 14(1)(d) does not apply.

In effect, the appellant’s references to Orders MA-1506 and P-516 are an attempt to counter the City’s confidentiality argument, and I will consider this in my analysis of section 14(2)(h) (personal information supplied in confidence) below.

#### ***Section 14(4)***

As I have discussed above, if any of the subsections in section 14(4) apply, disclosure is not an unjustified invasion of privacy. The appellant does not argue that this section applies, and based on my review of the records, I find that it does not.

#### ***Sections 14(2) and (3)***

As noted previously, if any of paragraphs 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b). The list of factors under section 14(2) is not exhaustive. The



institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

Neither the City nor the affected parties claim that any of the presumptions in section 14(3) apply. Based upon my review of the records, I have determined that section 14(3) does not apply.

Turning to section 14(2), I have concluded that section 14(2)(h) is a relevant consideration weighing against the disclosure of the personal information of the affected persons. This section, quoted in full above, provides a factor favouring privacy protection where the personal information was supplied in confidence by the individual to whom the information relates.

The sign-in form contains provisions not usually found on petitions. In particular, the portion of the sign-in form that has been disclosed to the appellant states that signing in is optional. The sign-in form also asks whether the person who signs the form consents to disclosure of his or her name and address to the respective Ward Councillor for the purpose of communicating with the signatory about the planning matter of the meeting. The sign-in form does not ask whether the person who signs the form consents to disclosure of his or her name and address to anyone else. The form provides that anyone entering their name on the sign-in form provided at the Community Consultation Meeting will be sent formal notice of any public meeting held by a district Community Council. The sign-in form also provides that the personal information on this form is collected under the authority of the City of Toronto Act, 1997, By-law 894 -1999 and the *Planning Act* R.S.O. 1990, c. 13. and may be used to provide updates on the file application.

In my view, the sign-in form, by specifically seeking consent for disclosure of the signatories' name and address to the respective Ward Councillor for the purpose of communicating with the signatory about the planning matter of the meeting, leads to an expectation by the signatories that their name and address would not be disclosed to anyone but the Ward Councillor on consent.

As discussed above, the appellant's arguments under sections 14(1)(c) and (d), in which he relies on Orders MA-1506 and P-516, attempt to counter the City's confidentiality argument based on an expectation of public availability or circulation. In my view, however, the sign-in form in question was not signed for the purpose of being circulated publicly. I find that the signatories to the sign-in form did not sign it with the expectation that they were taking a public stand regarding the subject matter of the meeting, as was the case with the petitions in the cases relied on by the appellant. I am supported in this conclusion by the representations of the affected persons objecting to the disclosure of their names from the sign-in form. Therefore, I find that the above-mentioned orders concerning petitions do not contradict the expectation of confidentiality arising from the sign-in form.

The City, in relying on section 14(2)(h), has outlined in its representations the steps taken to ensure the confidentiality of the names (and other personal information) of the attendees on the sign-in form. Upon review of the City's representations along with those of the affected persons and the appellant, and taking into account the contents of the sign-in form, I find that the personal information of the signatories to the sign-in form was supplied by the affected persons

with a reasonably held expectation of confidentiality as contemplated by section 14(2)(h) [Order PO-1767].

I must now consider whether there are any factors or circumstances which favour disclosure under section 14(2). In Order M-350, former Commissioner Tom Wright was dealing with information derived from the same type of record as the one before me, namely a sign-in sheet at a public meeting. He stated:

Having reviewed the information before me, including the records and the circumstances under which they came into existence, and taking into consideration that one of the central purposes of the Act is to protect the privacy of individuals with respect to personal information about themselves held by government organizations, I have reached the following conclusions:

- The appellant has failed to establish that any of the listed factors in section 14 (2) which favour disclosure apply. In my view, her submissions relate primarily to the planning and development process of which the public meeting was a part.
- Even assuming that guarantees of confidentiality were not provided at the meeting, this is not a circumstance which weighs in favour of disclosure of personal information.
- The fact that it was a public meeting does not mean that an individual has no interest in limiting further disclosure or dissemination of his/her personal information [Orders 180 and M-68]. Accordingly for the purpose of this appeal, the public nature of the meeting is not a circumstance which weighs in favour of disclosure.

Like Commissioner Wright in Order M-350, I am not satisfied that any factor favouring disclosure applies in this case. As section 14(2)(h) is the only relevant consideration under section 14(2) and it favours privacy protection, I find that the disclosure of the names on the sign-in form to the appellant in this case would constitute an unjustified invasion of personal privacy of the affected persons. This information is therefore exempt under section 38(b).

### **EXERCISE OF DISCRETION**

Section 38(b) is a discretionary exemption that allows the head of an institution to refuse to disclose personal information where it would be an unjustified invasion of privacy to do so. 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. On appeal, the Commissioner may determine whether the institution failed to exercise its discretion in a proper manner.

Relevant considerations in the exercise of section 38(b) 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
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

In exercising of its discretion under section 38(b) not to disclose all of the record to the appellant, the City states that it considered all relevant factors including:

- Individuals have the right of access to their own information and the privacy of individuals should be protected.
- Whether the requester is seeking his own personal information.

- The wording of the exemption. The personal information of the appellant in record has been provided to him. The information which the appellant is seeking and which has been denied to him is the personal information of other individuals. The disclosure of this information would constitute an unjustified invasion of personal privacy.
- The historic practice of the City with respect to this information. The City has always protected this personal information and has set out guidelines for the protection of such information.
- Whether the requester has a sympathetic or compelling need to receive the information.

I have reviewed the factors set forth by the City in the support of its exercise of discretion and find nothing improper in the manner in which it has done so. The City considered relevant factors and did not consider irrelevant ones. I further find that the City's discretion was exercised in accordance with one of the express purposes contained in the *Act*, section 1, namely, to protect the privacy of individuals with respect to personal information about themselves held by an institution such as the City.

**ORDER:**

I uphold the decision of the City.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ June 21, 2006