



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2147

Appeal MA06-234

City of Toronto



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NATURE OF THE APPEAL:

The requester was bitten by a dog on October 13, 2005 at a specified location on Kingston Road in Toronto. The requester submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Toronto (the City) for access to a copy of the file pertaining to this incident, including the name(s) and address of the dog owner(s), particulars of any charges or action taken by the City and any statements taken from the requester, any witnesses or the dog owner (the affected person).

The City located responsive records and granted partial access to them, severing out personal information, based on the mandatory exemption in section 14(1) of the *Act* (invasion of privacy).

The requester (now the appellant) appealed this decision.

During mediation, the parties confirmed that Records 2, 3 and 13 were released in full to the appellant and are, accordingly, not at issue in the appeal. The parties confirmed further that Records 1, 4-12 and 14-17 were released in part and are at issue. The appellant indicated that he is seeking access to all severances made to these records.

Also during mediation, the City clarified that it is claiming the mandatory exemption in section 14(1), with specific reliance on the presumption in 14(3)(b)(personal information compiled as part of an investigation into a possible violation of law) for Records 1, 10, 11, 12, 14, 15 and 17, and section 38(b) (discretion to refuse requester's own information), with reference to section 14(3)(b), for Records 4, 5, 6, 7, 8, 9 and 16.

The mediator also asked the City whether it had records that contained the particulars of any charges or action taken by the City, as well as any statements from individuals. The City stated that it had identified the complete file and that there were no additional records. The mediator conveyed this to the appellant who indicated that the reasonableness of the City's search for responsive records was not at issue.

Despite repeated efforts, the mediator was unable to contact the affected person to elicit this person's views regarding disclosure.

Mediation could not resolve the issues in this appeal. Accordingly, the file was forwarded to the adjudication stage of the process. I decided to seek representations from the City, initially. I also sent a copy of the Notice to the affected person at the address listed in the records. The affected person was invited to make submissions on the application of the exemptions to the personal information pertaining to him/herself.

The City submitted representations and consented to sharing them with the appellant, in their entirety. The Notice that was sent to the affected person was returned to this office with an "unclaimed" notation stamped on the envelope. I subsequently sought representations from the appellant and provided him with a copy of the City's representations along with the Notice. The appellant did not submit representations.

RECORDS:

Portions of the following records remain at issue:

Record 1 - City of Toronto Public Health Animal Services – Microchip Order – October 29, 2005

Record 4-12 – City of Toronto – Electronic Activity Sheets

Record 14 – City of Toronto Public Health Animal Services – Notice of Violation – January 26, 2006

Record 15 - City of Toronto Public Health Animal Services - Notice of Violation - January 25, 2005

Record 16 – City of Toronto Public Health Animal Services – Dog Bite Report - October 28, 2005

Record 17 – City of Toronto Public Health – Notice to Muzzle a Dog - October 29, 2005

The information severed from Records 1 and 4-9, 11-12, 14-17 consists of the affected party's address and telephone number. The severed information from Record 10 consists of a first name.

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 City submits that the information at issue, comprising a name of one individual and the address and telephone number of another individual qualifies as personal information within the meaning of the definition of that term in section 2(1). The City submits further that this information pertains to individuals other than the appellant, although it acknowledges that some of the records also contain the appellant's personal information.

I agree in general with the City's characterization of the information contained in the records at issue. I find that Records 1, 11, 12, 14 and 15 contain the personal information of the affected person only. I find further that Record 10 contains the personal information of the affected person and one other individual. Although this other individual is referred to in the record only by a first name, the identity of this person can be inferred by the context in which it appears. I

find that Records 4, 5, 6, 7, 8, 9 and 16 contain the personal information of the appellant and the affected person. I disagree with the City's position regarding Record 17. The City claims that it contains only the personal information of the affected person. Although the appellant is not referred to by name on this document, it records the fact that he was bitten by the affected person's dog and contextually, I find that he is identifiable by the record and that it constitutes his personal information.

Accordingly, I will determine whether the mandatory exemption in section 14(1) applies to Records 1, 10, 11, 12, 14 and 15 and whether the discretionary exemption in section 38(b) applies to the personal information in Records 4, 5, 6, 7, 8, 9, 10, 16 and 17.

INVASION OF PRIVACY

General Principles

I have found that the records contain the personal information of the appellant and other identifiable individuals. 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.

Where, however, a requester seeks personal information of another individual only, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14 or 38(b).

Sections 14(1) to (4) provide guidance in determining whether the personal information is exempt under section 14(1) or 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].

The City claims that the presumption at section 14(3)(b) applies. 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].

Relying on previous orders of this office (Orders M-382 and MO-1598), the City submits that the personal information at issue was compiled by the City as part of its investigation into an alleged contravention of a City of Toronto by-law, specifically Municipal Code 349 – Animals (formerly by-law 28-99), as well as the *Dog Owner's Liability Act*.

I find that the records at issue contain information pertaining to the City's enforcement of one of its by-laws. In my view, it is clear that the personal information in Records 4, 5, 6, 7, 8, 9, 10, 11, 12 and 16, 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 by-laws. This information comprises the complaint and other background information obtained at the time, and subsequent investigations taken. Therefore, I find that the presumption in section 14(3)(b) of the *Act* applies to the personal information pertaining to the identifiable individuals other than the appellant in these records.

Records 1, 14, 15 and 17 are records that were created following completion of the investigation and pertain to the resultant orders that were issued against the affected person. I find that they do not fall within the presumption in section 14(3)(b) as they were not compiled for the purpose of the investigation itself (See: Orders MO-1498 and MO-1824-I, for example).

I will, therefore, review the factors under section 14(2) to determine whether disclosure of the information that does not fall under section 14(3)(b) would be an unjustified invasion of personal privacy.

Section 14(2)

The City claims that the factor favouring non-disclosure in section 14(2)(f) applies in the circumstances as the personal information at issue is highly sensitive. In this regard, the City

indicates that disclosure of the affected person's address and telephone number could lead to unwanted contact from the appellant and could reasonably cause this person extreme distress.

The City states further that it considered whether the factor in section 14(2)(d) (the information is relevant to a fair determination of rights) might be applicable and concluded, based on the discussion in Orders PO-2026 and PO-2057, that this factor had little weight in the circumstances, since an alternative method of obtaining the information is available.

Sections 14(2)(d) and (f) state:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (f) the personal information is highly sensitive;

In Order M-1146, I made the following observations regarding the privacy interests at stake in disclosure of an individual's name and address:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the *Act*.

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

Based on this rationale, I find that the affected person's address is highly sensitive in the circumstances and the factor in section 14(2)(f) weighs heavily in favour of non-disclosure.

Although the City has turned its mind to the factor in section 14(2)(d), this factor has not been raised by the appellant nor has he made representations with respect to its relevance and weight. In the absence of representations from the appellant, I conclude that the factor favouring disclosure in section 14(2)(d) has no relevance in the circumstances. Even if I were to determine that it was relevant, I have insufficient evidence before me to conclude that it outweighs the very significant factor favouring non-disclosure in section 14(2)(f).

In summary, I find that the factor favouring non-disclosure in section 14(2)(f) applies to the undisclosed information in Records 1, 14, 15 and 17 . I find further that the presumption against disclosure in section 14(3)(b) applies to the personal information in all of the remaining records.

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* to all of the records and find that the personal information at issue does not fall within the ambit of this section. As a result, I find that the personal information in Records 1, 10, 11, 12, 14 and 15 is exempt from disclosure. I find further that the personal information in Records 4, 5, 6, 7, 8, 9, 10, 16 and 17 qualifies for exemption under section 38(b).

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)].

In exercising its discretion to withhold the information at issue, the City stated that it took into consideration a number of factors, including:

- the application of a presumption to the information;
- the appellant’s own information was disclosed to him, as was the affected person’s identity;

- all of the substantive information in the records has been disclosed;
- disclosure of this person's address and telephone number would likely cause distress;
- no compelling or sympathetic reasons for disclosure have been provided by the appellant;
- the recognition that the appellant likely wishes this information for legal proceedings, but has other means of obtaining it.

I find that the City has properly taken all relevant factors into consideration in exercising its discretion to withhold the personal information at issue and, therefore, uphold its exercise of discretion under section 38(b). Although the City technically did not exercise its discretion regarding disclosure of the personal information in Record 17, I find that its submissions are equally applicable to this record in the circumstances. Accordingly, the personal information contained in Records 4, 5, 6, 7, 8, 9, 10, 16 and 17 is exempt from disclosure pursuant to section 38(b) of the *Act*.

ORDER:

I uphold the City's decision.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ January 29, 2007