



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2156

Appeal MA06-262

County of Brant



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NATURE OF THE APPEAL:

The requester submitted a two-part request to the County of Brant (the County) under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for:

Each, any, all and every mention of myself in any files, minutes of Council meetings, recorded bilaw specific, including up to date pic's as of 2000 forward. property [identified address].

and

Each, any, all and every item's of personal info, as of 2000 forward.

The County identified five records or record groups, each comprising multiple documents, as being responsive to the request. The County then granted access to two records and applied the exemptions found in sections 8(1)(a), 8(1)(b) (law enforcement) and 12 (solicitor-client privilege) of the Act to deny access to the remaining three record groups (the records), in their entirety.

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

During mediation, the appellant confirmed that he is appealing the County's denial of access to the three outstanding records. It should be noted that some of the documents pre-date the parameters set out in the appellant's request. However, the County indicated that the matter to which the records relate is on-going, and the pre-2000 documents are relevant to the overall issue. It was agreed between the parties that these documents would be included in the records at issue.

The County issued a supplementary decision in which it added the exemptions found in sections 38(a) (discretion to refuse requester's own information in conjunction with sections 8 and 12) and 38(b) (invasion of privacy) to deny access to Records 1 and 2, because the records appeared to contain the appellant's personal information.

No issues were resolved during mediation and the file was referred to me for adjudication.

I conducted an inquiry and sought representations from the County, initially. The County submitted representations in response and they were shared, in their entirety, with the appellant, who was also asked to make submissions. The appellant did not submit representations. However, in a telephone call to the Adjudication Review Officer (ARO) assigned by this office, the appellant stated that he was not interested in obtaining the personal information of anyone other than himself.

I subsequently issued Interim Order MO-2133-I, in which I ordered the release of some portions of the records and found that Record 3, in its entirety, qualified for exemption pursuant to the discretionary exemption in section 38(a) read in conjunction with the discretionary exemption in section 12. I found further that some of the personal information contained in the records qualified for exemption under the discretionary exemption in section 38(b).

However, sections 12, 38(a) and 38(b) are discretionary exemptions, and permit an institution to disclose information, despite the fact that it could withhold it. The County did not submit representations regarding its exercise of discretion under these three provisions of the *Act*. Accordingly, in provision 2 of Interim Order MO-2133-I, I ordered the County to exercise its discretion pursuant to sections 12, 38(a) and 38(b).

In accordance with provision 3 of Interim Order MO-2133-I, the County has provided me with representations on its exercise of discretion. Since the appellant did not make representations at first instance, I have decided to issue my final order with respect to the County's exercise of discretion in this appeal without seeking the appellant's views on this issue.

DISCUSSION:

The section 12, 38(a) and 38(b) exemptions are discretionary and permit 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)).

Relevant considerations 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

I have reviewed the County's representations regarding the factors it has taken into consideration in exercising its discretion not to disclose the record and portions of the records that qualify for exemption pursuant to sections 12, 38(a) and 38(b). I have also taken into account the appellant's verbal confirmation to the ARO that he is not seeking personal information of another identifiable individual.

With respect to Record 3, the County indicates that it sought legal input and advice from the solicitor with respect to proceeding in a bylaw enforcement matter. The County asserts that this is routine practice, which benefits the County and the public by ensuring that legal matters are pursued when in the best interest of both, in order to minimize cost and unnecessary prosecutions. The County maintains that privilege attaches to this record and notes that the matter pertaining to the appellant has proceeded to court, wherein all relevant evidence has been produced to the appellant through the disclosure process. This last factor was also considered in determining whether to disclose the personal information in the records.

Based on the County's submissions, along with the appellant's position regarding the personal information in the records, I am satisfied that the County considered relevant factors in deciding to exercise its discretion not to disclose the remaining information at issue in the records. I therefore find that the County's exercise of discretion was proper.

ORDER:

I uphold the County's decision to withhold Record 3 pursuant to sections 12/38(a), and the portions of Records 1 and 2 that I had highlighted on the copies of these records that were sent to the County with Interim Order MO-2133-I pursuant to section 38(b).

Original signed by: _____
Laurel Cropley
Adjudicator

_____ February 6, 2007