



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER MO-2146-I**

**Appeal MA-060222-1**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

The requester submitted a request to the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information related to complaints made to the City about her property. The request specifically stated:

I request the photocopy of the report placed against my property, dated March 30<sup>th</sup> 2006. (approximately).

The City located responsive records and granted partial access to them. The City denied access to the remaining portion of the records in accordance with the mandatory exemption in section 14(1) (invasion of privacy) of the *Act*.

The requester, now the appellant, appealed that decision.

During the mediation stage of the process, the appellant confirmed that she was seeking the name, address and telephone number of the individual who filed the complaint. No issues were resolved during mediation and the file was referred to adjudication.

I decided to seek representations from the City initially.

During mediation, the City took the position that the records do not contain the appellant's personal information as the complaint is against the property. Moreover, the City asserts that the only information in dispute in this record is the name of the complainant. It should be noted that the City has only provided a copy of a one-page document which it identifies as the "record at issue". Based on my review of the records that were responsive to the request as provided by the appellant, it is apparent that the one-page document provided by the City is actually page two of a two-page document. Therefore, identification of the record at issue was raised as an issue in this appeal. The City was also asked to address whether section 38(b) applies in the circumstances.

The City submitted representations in response to the Notice and consented to sharing them with the appellant, in their entirety. I then sent the appellant a copy of the Notice along with the City's representations. The appellant also made submissions. During the adjudication stage of this appeal, the appellant indicated that she had made the request on behalf of herself and her husband. The appellant's husband provided a letter confirming that he was also a party to this appeal. For ease of reference, I will refer to the husband as the male appellant.

## **DISCUSSION:**

### **RECORD AT ISSUE**

The record identified by the City as being at issue is a completed form from the City's Municipal Licensing and Standards Branch. The City disclosed the vast majority of the records and information in the subject record to the appellant. As noted above, the City claims that only one page of this record, which identifies the name, address and telephone number of the complainant, is at issue in this appeal. However, on review of the records that were provided to the appellant it is apparent that this is the second page of a two-page document entitled "Investigation Card".

The City explained its rationale for its approach to identification of the record at issue.

The City has always identified each page as a “record” and has reviewed records on a “record by record”, ie. “page by page” basis and not “individual paragraphs, sentences or words contained in record” in its application of exemptions. This method has previously been considered consistent with the IPC’s approach for determining whether Part 1 or Part 2 of the *Act* applies. If the “record” ie., the page also contains the personal information of the requester as well as of another individual, Part 2 would apply.

Therefore, in the circumstances of this request, based on the City’s interpretation of a “record”, the only “record” remaining at issue is Record 5 which contains the name, address and telephone number of the individual who filed the complaint. The appellant is not seeking access to Record 4 to which access in full has been granted.

I am not persuaded that the City’s position is consistent with the intent of the long-standing approach identified by the Commissioner’s office in determining whether records should be analyzed under Part I or II of the *Act*. The approach to take in making this determination was articulated in Order M-352:

In order to give effect to the legislature's intention to distinguish between requests for an individual's own personal information and other types of requests, the Commissioner's office has developed an approach for determining whether Part I or Part II of the Act applies. In that approach, the unit of analysis is the record, rather than individual paragraphs, sentences or words contained in a record.

This approach has been applied in many past orders, and it is set out in detail in the October 1993 edition of IPC Practices entitled "Responding to Requests for Personal Information". That publication states, in part, as follows:

Generally, an individual seeking access to a record that contains his or her personal information has a greater right of access than if the record does not contain any such information. ... Part II of the municipal *Act* oblige[s] institutions to **consider** whether records should be released to an individual, regardless of the fact that they may otherwise qualify for exemption under the legislation.

In my view, the record-by-record analysis best reflects the special character of requests for records containing one's own personal information, and it provides a practical, uniform procedure which all institutions can apply in a consistent manner.

It requires institutions to analyze records which are identified as responsive to a request in order to determine whether any of them contain personal information pertaining to the requester. For records which are found to contain the requester's own personal information, the institution's access decision is to be made under Part II of the *Act*. For records which do not contain the requester's own personal information, the decision would be under Part I.

In my view, the City's approach does not provide a practical, uniform procedure that can be applied consistently in identifying whether records contain personal information pertaining to the requester. Rather, I find that the City's approach leads to an absurdity in interpretation. In this case, the document entitled "Investigation Card" is intended to be read as a whole – it is the official record of the complaint and contains all the necessary component parts, including the name of the owner and address of the subject property, the nature of the complaint, the complainant's name and comments made by the individual assigned to investigate the matter relating to actions taken. The fact that the contents of this document require two pages, where the complainant's personal information is situated at the end of the document, does not alter the nature of the document. To view this document otherwise is an overly technical approach to the identification of personal information and effectively limits the appellants' right of access to their own personal information.

Accordingly, I find that the record at issue is comprised of the two-page document entitled "Investigation Card".

## **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.)].

Numerous orders of this office have examined the question of whether information about a property qualifies as personal information. In Order M-15 former Commissioner Tom Wright considered whether a municipal address could be considered as "personal information" in the context of a by-law violation. He concluded that it did not. In coming to that conclusion, Commissioner Wright adopted the reasoning of former Commissioner Sidney B. Linden in Order 23 where the former Commissioner stated:

The municipal address of a property is a description identifying the location of the property in a municipality ...

An individual's address, on the other hand, is his or her 'place of residence'. The owner of a property may or may not be an individual, and individual property owners may or may not reside in the property they own ... It is clear to me that the

municipal location of a property cannot automatically be equated with the address of its owner ..."

In Order M-15, former Commissioner Wright determined that Orders to Comply issued against municipal properties containing information concerning repairs to be made to the properties did not constitute personal information. This conclusion followed the reasoning that resulted in the determination that the municipal address of a property is not personal information. (See also: Order M-181)

However, other orders have determined that where a complaint refers to the "use of a property" by an individual, that information may qualify as "personal information". [Order MO-1245]

In its submissions, the City simply states that the information at issue consists of the name, address and telephone number of an individual who filed a complaint about a property. The City acknowledges that the first page of the record also contains the name of an individual other than the appellant, who is identified as the owner of the property. The City states that the record contains only the information of individuals other than the appellant.

The record at issue clearly records a complaint made against a property and contains the municipal address of the property, as well as information about an identifiable individual who made the complaint. Accordingly, I find that the record contains the personal information of this individual.

However, in addition to the nature of the complaint, the record also contains the name and residential address of one of the owners (the male appellant) of the property and contains handwritten notes made by the investigator of his conversations with one of the owners regarding this person's concerns and the City's observations. The identity of the homeowner interviewed is not expressly written, however, it is apparent from the record itself that it was one of the two appellants. Additionally, other information in the records disclosed to the appellant confirms that the appellant spoke to the investigator. I find that both of the appellants are clearly identified and/or identifiable in the record at issue. The information about them consists of name, address and personal observations and thus qualifies as their personal information under paragraphs (d) and (h) of the definition of that term in section 2(1).

## **INVASION OF PRIVACY**

### **General Principles**

I have found that the records contain the personal information of the appellants and another identifiable individual. 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.

Sections 14(1) to (4) provide guidance in determining 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, MO-1496 and MO-1845), 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, City of Toronto, Municipal Code, Chapter 548 – Litter and Dumping of Refuse and thus falls within the presumption at section 14(3)(b).

The record at issue, identified as an Investigation Card, contains all of the elements of the complaint and subsequent investigation pertaining to the City’s enforcement of one of its by-laws. In my view, it is clear that the personal information in the record, which relates to an individual other than the appellants, was compiled and is identifiable as part of an investigation into a possible violation of the City’s by-laws. Therefore, I find that the presumption in section

14(3)(b) of the *Act* applies to the personal information pertaining to an identifiable individual other than the appellants.

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* and find that the personal information at issue does not fall within the ambit of this section. As a result, I find that it 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)].

The City did not provide representations on its exercise of discretion with respect to section 38(b) of the *Act* on the basis of its conclusion that the record at issue does not contain the appellant’s personal information. Based on the contents of the record at issue, the City’s position is not tenable. I have, therefore, decided to return this matter to the City in order for it to exercise its discretion regarding the disclosure of the personal information contained in the record.

In doing so, the City should take into consideration the appellants’ reasons for seeking the information. In their submissions, the appellants indicate that they have lived in the same neighbourhood for 17 years and that the neighbourhood is a pleasant one where everyone gets along. They were therefore very surprised to have this complaint made against them anonymously. They indicate that although they believe that they know who made the complaint, as they have received the “cold shoulder” from a certain family since this other family moved into the neighbourhood and because there are a number of other issues that have arisen between them, they cannot be certain unless the identity of the complainant is disclosed to them.



The appellants also submit that not knowing the identity of the complainant takes away their freedom and rights. They claim that they are left with the feeling that they are being watched every moment, and are constantly wondering whether they are doing something wrong, which causes them discomfort, stress and concern. They submit that because of this situation, they no longer feel secure in a house they have called home for many years.

**ORDER:**

1. I order the City to exercise its discretion under section 38(b) taking into account relevant considerations.
2. I order the City to provide me with representations on its exercise of discretion no later than **February 8, 2007**.
3. I will defer my final decision with respect to disclosure of the personal information in the record at issue pending my review of the City's exercise of discretion as required by Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ January 24, 2007