



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER MO-2126-I

Appeal MA-050117-1

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 access to information relating to social assistance payments made to the requester's former spouse. In his request letter, the requester indicates that he had sponsored his former spouse's admission to Canada, and is obliged to repay the social assistance payments made to his former spouse during the sponsorship period before he is able to sponsor any other individual's admission to Canada. He refers to the amount to be repaid by him under the "sponsorship default", which was apparently triggered under the Sponsorship Agreement the requester entered into with Citizenship and Immigration Canada.

The City responded to the request by letter stating:

Please be advised that in the absence of [the former spouse's] consent, access is denied in full to the request of the amount of Ontario Works Assistance that has been issued to [the former spouse] pursuant to section 14(1) [invasion of privacy] of the *Act* as release of the information would constitute an unjustified invasion of [the former spouse's] privacy.

Along with its decision, the City provided the requester with a copy of sections 14, 36 and 38 of the *Act*.

The requester, now the appellant, appealed the decision of the City.

During the mediation stage of the appeal, the mediator asked the City to provide her with a copy of the record at issue. In response, the City provided a copy of what it identifies as "the responsive record at issue in this appeal, which has been created in response to the appellant's request". The identified record is a draft letter (that has not been sent), addressed to the appellant, stating:

I am replying to your request for access to the amount of Ontario Works Assistance that has been issued to [the named former spouse]. Your request, under the [*Act*], was received on [an identified date].

Please be advised that the total amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto is [a specified dollar amount].

The letter then describes the manner in which the "reimbursement of social assistance by a defaulting sponsor" can be made.

The parties were not able to resolve this matter through further mediation, and this file was transferred to the inquiry stage of the process. In addition, the mediator identified that the record may also contain the personal information of the appellant, and the mediator added section 38 of the *Act* (request for one's own personal information) as an issue in this appeal.

I decided to send a Notice of Inquiry to the City, initially, soliciting its representations on the facts and issues in the appeal. I was unable to send the Notice of Inquiry to the former spouse of the appellant [the affected party], as her current address cannot be located.

In addition, due to the nature of the issues raised in this appeal, the competing interests identified in this file, and in light of the findings in Order MO-1564 (in which Assistant Commissioner Tom Mitchinson stated that where a private interest in disclosure raises issues of more general application, a public interest may be found to exist), I invited the City to address the issue of whether a “compelling public interest” under section 16 of the *Act* applies to override the exemption claims that might apply in this appeal.

The City provided representations in response to the Notice of Inquiry. In its representations, the City indicates that it is taking the position that the amount of repayment that is owed by the appellant to the City ought to be considered the personal information of the appellant, and takes the position that this information ought to be disclosed to the appellant.

In light of the position taken by the City in its representations, and my decision as set out below, I decided not to seek representations from the appellant at this time.

RECORDS:

The record at issue in this appeal is a letter prepared by the City, which has been created in response to the appellant’s request. The letter (which has not been sent) is addressed to the appellant and states:

I am replying to your request for access to the amount of Ontario Works Assistance that has been issued to [the named former spouse]. Your request, under the [*Act*], was received on [an identified date].

Please be advised that the total amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto is [a specified dollar amount].

The letter then describes the manner in which the “reimbursement of social assistance by a defaulting sponsor” can be made.

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 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].

The City submits that the record contains both the personal information of the appellant and his former spouse. It states "... the record contains the name of the spouse who received social assistance and the amount the appellant is required to pay back to the City."

The record at issue, a one-page letter prepared by the City and created in response to the appellant's request, contains information relating to the amount owed by the appellant to the City. I am satisfied that it contains the personal information of the appellant as it contains his address (paragraph 2(d)) and his name along with other personal information relating to him (paragraph 2(h)). In particular, this information includes the amount of General Welfare/Ontario Works Assistance money to be reimbursed by him to the City.

In addition, I am satisfied that the record contains the personal information of the appellant's former spouse [the affected party] including her name, as well as other personal information relating to her (paragraph 2(h)). Specifically, this includes that she was a recipient of General Welfare/Ontario Works Assistance, and the amount of money owed on her behalf to the City by the appellant.

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 exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual.

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 own personal information against the other individual's right to protection of their privacy.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy.

Section 14(2) provides some criteria to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The City has identified that it considered the possible application of the presumption in section 14(3)(c), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

With respect to the possible application of section 14(3)(c), the City submits that "the *amount of repayment that is owed by the appellant* to the City is more appropriately identified as the personal information of the appellant only". The City then refers to submissions it provided in an earlier reconsideration, which state:

It is important to note that the amount a sponsor is required to repay is not necessarily the total amount of social assistance received by the person being sponsored. The sponsor is only responsible for repaying social assistance during the sponsorship period. Amounts paid after the term of the sponsorship are not

the responsibility of the sponsor. Furthermore, the City often provides “discretionary” social assistance such as employment assistance (eg. cost of transportation and clothing) and health assistance (eg. cost for glasses or dental). This discretionary social assistance is often provided in addition to the basic social assistance intended for food and shelter. A sponsor is only responsible for repaying *basic* social assistance paid to the person being sponsored during the term of the sponsorship.

The City then provides the following further submissions in support of its position that the presumption in section 14(3)(c) does not apply:

Clearly the total amount owed by the sponsor is not necessarily the total amount of assistance received by the person being sponsored. Therefore, this information cannot directly reveal the level of benefits provided to a person on social assistance. Accordingly, the information that the City would be disclosing describes the financial information of the sponsor as the debtor more accurately than it describes the financial information of the person being sponsored.

It is therefore the City’s view that the record at issue in the current appeal does not relate to the appellant’s former spouse’s eligibility for social services or a determination of her benefit levels. It is the amount owed by the appellant during the sponsorship period. The City submits therefore that section 14(3)(c) of the *Act* does not apply.

The City submits that the only personal information of the appellant’s spouse that is contained in the record at issue is her name and the fact that she has been in receipt of social assistance benefits during a period of time that fell within the period of the appellant’s sponsorship. This information is known to the appellant.

I accept the position taken by the City that the amount of money owed by the sponsor does not necessarily reflect the total amount of assistance received by the person being sponsored. However, the wording of the presumption in section 14(3)(c) is not restricted to the disclosure of the specific amounts received nor the benefit levels, rather, the section states that the disclosure is presumed to constitute an unjustified invasion if the personal information “relates to eligibility for social service or welfare benefits”.

Previous orders have established that the disclosure of information which would reveal the identity of a recipient of social benefits is presumed to constitute an unjustified invasion of privacy. In Order MO-1254, Adjudicator Laurel Cropley had to determine whether the disclosure of information which would reveal which companies participated in a “workfare” program could disclose information which would fall within the presumption in section 14(3)(c). She found that it would:

It is clear ... that in order to maintain eligibility for social assistance, a recipient of social assistance must, with a few exceptions, participate in the workfare program. In my view, identification of a participating agency which could, in turn, serve to reveal the identity of the individual placed under this program could indirectly disclose information relating to the individual's eligibility for social service. Therefore, I find that the presumption in section 14(3)(c) applies to the personal information in the record.

In the above, simply revealing the identity of an individual involved in a workfare program was found by Adjudicator Cropley to fall within the presumption in section 14(3)(c).

Similarly, in this appeal, I find that the information contained in the record, namely, the individual's name combined with the fact that she has been in receipt of social assistance benefits during a period of time, is sufficient to fit within the presumption in section 14(3)(c), as it "relates to eligibility for social service or welfare benefits". Accordingly, the disclosure of the personal information is presumed to constitute an unjustified invasion of the affected person's privacy and the record is, therefore, exempt under section 38(b).

The City also refers to a number of factors which, in its view, favour disclosure. However, because the presumption in section 14(3)(c) applies to the information in the record, its disclosure is presumed to constitute an unjustified invasion of the personal privacy of the affected person, which cannot be rebutted by either one or a combination of the factors, listed or unlisted, under section 14(2). However, I will discuss a number of these factors in my review of the exercise of discretion, set out below.

Exercise of Discretion

General principles

Where appropriate, institutions have the discretion under the *Act* to disclose information even if it qualifies for exemption under the *Act*. Because section 38(b) is a discretionary exemption, this office must also review the City's exercise of discretion in the circumstances of this appeal.

In addition, this office 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 any of these cases, 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)].

Representations

With respect to the manner in which the City exercised its discretion, the City states that it denied access to the record on the basis of a previous order issued by me, Order MO-1906 (currently subject to a reconsideration request), in which I found that a similar request for information by a sponsor was exempt from disclosure under section 14(1) of the *Act*. I note, however, that the circumstances in that appeal were considerably different than the ones in this appeal. In my view, the circumstances of this appeal differ from those in MO-1906 in the following three significant ways:

- the requested record in MO-1906 consisted of a list of the payments made by the City to the recipient of social assistance, and contained the sponsored individual's name, date of payment, benefit month, amount paid and type of payment;
- the requested record did not contain the personal information of the sponsor, and section 38(b) was not an issue;
- the main representations of the parties related to whether the consent to disclose information, signed by the sponsored person a number of years earlier, constituted consent under section 14(1)(a) of the *Act*. Given that the sponsored person herself appealed the decision to disclose the information, and stated that she did not consent to the disclosure of her personal information, I found that section 14(1)(a) did not apply.

In this appeal, the City has indicated that, absent Order MO-1906, the City would have exercised its discretion to disclose the record at issue to the appellant. However, the City believes that it is constrained from doing so on the basis of Order MO-1906.

The City then identifies the following factors it would consider in exercising its discretion to disclose the record to the appellant:

- the purposes of the *Act*, including the principles that individuals should have a right of access to their own personal information and the privacy of individuals should be protected. In the circumstances of this appeal, it is the City's view that the appellant is seeking access to his own personal information and what remains at issue, i.e., the name of the sponsored person and the fact that she has collected social benefits is not sensitive personal information.
- that the appellant has a sympathetic and compelling need to receive the information, i.e., to repay back what he owes to the City so that he can sponsor another individual.

In addition, in other portions of its representations, the City refers to the following factors which it considers favour disclosure:

- the only personal information of the appellant's former spouse that is contained in the record is her name and the fact that she has been in receipt of social assistance benefits during a period of time that fell within the appellant's sponsorship. This information is known to the appellant.
- pursuant to the written sponsorship agreement entered into between the sponsored person and the sponsor, the sponsored person consented to the release to the sponsor of "information concerning social assistance the sponsored person ... applied for or received during the validity period of the sponsorship undertaking". Therefore, the sponsored person previously gave her consent to the disclosure of the information.
- under the Federal *Immigration and Refugee Protection Regulations*, a new sponsorship application will only be approved if a sponsor is not in default of his previous undertaking to repay "all social assistance paid to the sponsored person ...".
- the City is currently unable to recover the payments that are due to it (as delivery agent) which it is obliged to do in accordance with its agreement with the Ministry of Community and Social Services.
- The sponsor is told that he must repay the outstanding amount but cannot be told what this is. The sponsor is thus denied access to information that would allow him to rectify his defaulting status and, as a result, he is unable to sponsor anyone else. The City believes that this results in "an absurd and unfair situation", which has been created for both the appellant and the City.

The City summarizes its view by stating that the amount of the reimbursement owed by a defaulting sponsor (the appellant) should be disclosed to him. The City believes that such a disclosure would not be an unjustified invasion of the personal privacy of his former spouse and, further, that the right of the appellant to access this information clearly outweighs any privacy rights that might exist.

The City also submits that it would have exercised its discretion in good faith and for a proper purpose.

Findings

The circumstances in this appeal are somewhat unique, as the City has exercised its discretion not to disclose the record at issue to the appellant (based on its reading of Order MO-1906), but has indicated in its representations that it wants to exercise its discretion to disclose the information, under section 38(b).

I have carefully reviewed the representations provided by the City, to decide whether it properly exercised its discretion in the circumstances of this appeal. As set out above, I may find that the City erred in exercising its discretion where,

- 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

If the City is found to have erred in the exercise of discretion based on any of these three reasons, I may send the matter back to the City for a re-exercise of discretion.

Did the City exercise its discretion for an improper purpose?

Based on the representations provided by the City, I find that it did not exercise its discretion for an improper purpose.

Did the City take into account irrelevant considerations?

On my review of the representations of the City, I find that the City took into account an irrelevant consideration in deciding to exercise its discretion not to disclose the record at issue to the appellant.

As set out above, the City submitted that it had exercised its discretion not to disclose the record on the basis that it was constrained from doing so on the basis of the reasoning in Order MO-1906. However, as I set out above, Order MO-1906 can be distinguished from the circumstances of this appeal. I find that the circumstances in Order MO-1906 are different from those in the present appeal in the following two significant ways:

- the record at issue in MO-1906 was different than the record at issue in this appeal; and
- the discretionary exemption in section 38(b) was not an issue in MO-1906.

In light of these two significant differences, and given that the City has stated that it exercised its discretion not to disclose the record on the basis that it was constrained from doing so by Order MO-1906, I find that the City took into account an irrelevant factor in exercising its discretion not to disclose the record. This irrelevant factor is the City's position that it is constrained from disclosing the record on the basis of Order MO-1906 when it is not, in fact, constrained from doing so. Although Order MO-1906 is a factor to consider in exercising its discretion, in my view, it does not prohibit the City from disclosing the record. By stating that it does, the City is taking into account an irrelevant factor, and I will order it to re-exercise its discretion without taking into account that irrelevant factor.

Having made that finding, on my review of the other factors the City identifies that it would consider in exercising its discretion to disclose the record to the appellant, I am satisfied that those factors, as set out above, are relevant factors to consider in exercising its discretion. In addition, a further factor which the City did not specifically identify, but which is a factor in this appeal, is that attempts were made to notify the affected party of this request.

Conclusion

The City erred in exercising its discretion under section 38(b), as it took into account an irrelevant consideration. I therefore order the City to re-exercise its discretion without taking into account that irrelevant factor.

I have decided to reserve my determination with respect to the possible application of section 16, pending the City's re-exercise of its discretion.

ORDER:

1. I uphold the decision of the City that section 38(b) of the *Act* applies to the record, subject to the re-exercise of discretion referred to below.
2. I order the City to re-exercise its discretion under section 38(b) of the *Act*, without taking into account irrelevant considerations, using the above as a guide.
3. I order the City to provide me with representations on its exercise of discretion no later than **December 18, 2006**.
4. I will defer my final decision with respect to disclosure of the record pending my review of the City's exercise of discretion as required by Provision 2.
5. I remain seized of this appeal in order to deal with the exercise of discretion issue, and any other issues that may be outstanding.

Original signed by: _____
Frank DeVries
Adjudicator

November 27, 2006

POSTSCRIPT:

The circumstances of this appeal raise unique issues involving the weighing of various rights and responsibilities, including the balancing of various access and privacy rights. The process of addressing these issues has been greatly assisted by the creation by the City of a record which identifies only the specific information at issue. Although there is, in general, no statutory obligation on an institution to create a record in response to a request, I commend the City for the approach it has taken in creating a relevant record in the circumstances of this appeal.