

FINAL ORDER MO-2170-F

Appeal MA-060222-1

City of Toronto

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 30th 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 conducted an inquiry and sought 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.

I subsequently issued Interim Order MO-2146-I, in which I found that the records contained the appellants' personal information. I also found that the personal information of an individual other than the appellants contained in the records qualified for exemption under the discretionary exemption in section 38(b). The City did not make submissions on its exercise of discretion in withholding the personal information of the other individual identified in the records. Accordingly, in provision 1 of Interim Order MO2146-I, I ordered the City to exercise its discretion under section 38(b).

In accordance with provision 2 of Interim Order MO-2146-I, the City has provided me with representations on its exercise of discretion. I provided the appellants with a copy of these

submissions and sought their representations in reply. The appellants submitted representations and I have considered them in arriving at my decision.

DISCUSSION:

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)).

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

The City indicated in its submissions that it took a number of factors into consideration in exercising its discretion not to disclose the identity of the complainant to the appellants, including those identified above. The City submits that it has historically maintained the confidentiality of the identities of complainants to alleged by-law infractions as this information is highly sensitive. The rationale for so doing is to foster greater assistance to the City from its citizens, for the purposes of its investigations to ensure compliance with the City's various by-laws without fear of repercussions, including unwanted contact or harassment by those they have complained about. The City notes that it advises complainants that their personal information will be kept confidential and that they, therefore, have an expectation of confidentiality. The City notes further that, in this case, the individual did not consent to disclosure.

The City also indicated that it considered the appellants' concerns as outlined in Interim Order MO-2146-I, but found that they were insufficient to outweigh the right of the complainant to remain anonymous.

In their submissions, the appellants reiterate their concerns about not knowing who complained about their property, stating that they feel that they are being watched.

Based on the submissions of the parties, I find that the City has taken into consideration relevant factors in deciding to exercise its discretion not to disclose the personal information of the complainant. I therefore find that the City's exercise of discretion was proper.

ORDER:

I uphold the City's decision to withhold the personal information of the complainant pursuant to section 38(b).

Original Signed By: _____

March 12, 2007

Laurel Cropley
Adjudicator