



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2220

Appeal MA06-387

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 “a copy of a form dated Nov. 9/2004 signed by an imposter [named individual] who came into the North York City [office] and signed a change of ownership on my mother’s property of 40 yrs (the property) and owned jointly with her daughter [the requester].”

The City issued a decision letter in which they stated that pursuant to section 14(5) of the *Act*, they would not confirm or deny the existence of the requested record.

The requester (now the appellant) appealed the City’s decision to this office.

Mediation did not resolve the appeal and, as a result, this matter was moved to the adjudication stage of the appeal process. I began my inquiry into this matter by sending a Notice of Inquiry to the City inviting them to make representations on the facts and issues in this appeal. I received representations from the City. I also sent a modified Notice of Inquiry to the affected party, the individual whom the appellant identified in her request. The affected party did not submit representations. I then sent a Notice of Inquiry to the appellant inviting her to submit representations, along with the non-confidential portions of the City’s representations. I received representations from the appellant.

SUMMARY OF CONCLUSIONS:

In this order, I have decided not to uphold the City’s section 14(5) claim because, in my view, the requirements for the application of the section have not been met. I therefore confirm the existence of the responsive record. With respect to the disclosure of the record, I have concluded that the information in the record is not exempt under section 14(1) of the *Act* and the entire record should be disclosed to the appellant. Accordingly, in the discussion that follows, I have disclosed the fact that the record exists and I have described the type of information that is contained in the record. Further, as I have decided that the existence of the record should be disclosed to the appellant in the circumstances of this appeal, the need to maintain confidentiality of some of the severed portions of the City’s representations no longer exists, and I intend to refer to the confidential portions of the representations in my analysis where necessary to do so to explain the reasons for this decision.

RECORDS:

The responsive record is a single-page “Change Request Form” from the City. A number of sections of the form have apparently been completed by the affected party:

- The Assessment Roll No./Water Account No. and the Property Location of the property have been completed.
- Under the title “Change of Ownership/Mailing Address”, the affected party is listed as the new owner, along with a mailing address.
- A date has been added next to the heading, “Closing Date”.

- At the bottom of the form, spaces for the “Owner’s Signature”, “Telephone Number”, “Request Taken By” and “Civic Centre Location” have been completed.

Portions of the form remain blank, including sections entitled “Pre-Authorized Information” and “Mortgage Information”.

Although not apparent on its face, the form appears to have been completed by the affected party and provided to the City for the purposes of changing the City’s ownership record of the property.

DISCUSSION:

PERSONAL PRIVACY/REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF A RECORD

Section 14(5) of the *Act* reads:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

Section 14(5) gives an institution discretion to refuse to confirm or deny the existence of a record in certain circumstances.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the *Act*. By invoking section 14(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power which should be exercised only in rare cases [Order P-339].

Before an institution may exercise its discretion to invoke section 14(5), it must provide sufficient evidence to establish both of the following requirements:

- 1) Disclosure of the record would constitute an unjustified invasion of personal privacy;
and
- 2) Disclosure of the fact that the record exists would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

The Ontario Court of Appeal has upheld this approach to the interpretation of section 21(5) of the *Freedom of Information and Protection of Privacy Act*, which is identical to section 14(5), stating:

The Commissioner’s reading of s. 21(5) [the provincial equivalent to section 14(5)] requires that in order to exercise his discretion to refuse to confirm or deny

the report's existence the Minister must be able to show that disclosure of its mere existence would itself be an unjustified invasion of personal privacy.

[Orders PO-1809, PO-1810, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 4813 (C.A.), leave to appeal dismissed (May 19, 2005), S.C.C. 30802]

The first requirement for the application of section 14(5) raises the issue of whether disclosure of the record would constitute an unjustified invasion of personal privacy. The essence of the requirement relates to the application of section 14(1). I will therefore begin my analysis with this first requirement and in the course of doing so, I will also decide whether the record is exempt under section 14(1).

Personal Information

As noted above, under part one of the section 14(5) test, the institution must demonstrate that disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information. Personal information is defined, in part, in section 2(1) of the *Act* as follows:

“personal information” means recorded information about an identifiable individual, including,

- (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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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].

Representations

The City states:

If the record existed, it would be a standard Change of Request Form that when completed could contain the assessment roll number/water account number, property location, name of new owner, closing date of purchase, mailing address if different from property address, banking information including account number, mortgage information, owner's signature, telephone number etc.

The City submits that this information would meet the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

Although the appellant filed representations in this appeal, her representations do not directly address this issue.

Findings and Analysis

I have reviewed the record and I find that it contains information about the affected party including his address, telephone number and signature. I find that this is "recorded information" about an identifiable individual and therefore, the record contains the affected party's personal information pursuant to paragraphs (d) and (h).

Unjustified invasion of personal privacy

Where a requester seeks personal information of another individual, section 14(1) prohibits the disclosure of this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) apply. In particular, section 14(1)(f) indicates that the exemption does not apply "if the disclosure does not constitute an unjustified invasion of personal privacy." Sections 14(2) through (4) of the *Act* help in determining whether disclosure would or would not be an unjustified invasion of privacy.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure is presumed to be an unjustified invasion of privacy. 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 v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

Representations

The City submits that the presumptions in section 14(3)(e) and (f) would apply to the personal information that it contains. The City states:

That if the form existed, the City's Revenue Services-Taxes and Water, [Mailing address and ownership updates] would have compiled (gathered) the personal information for the purpose of collecting property taxes and water payments.

The City also submits that if the form existed, it could contain information that could be said to describe an individual's assets, liabilities and financial activities.

Therefore, if the record existed, the presumptions in section 14(3)(e) and (f) would apply and the disclosure of the personal information would constitute an unjustified invasion of personal privacy. The City submits that neither section 14(4) nor section 16 of the *Act* would apply.

Therefore, if the record existed, the disclosure of the personal information it would contain would constitute an unjustified invasion of an individual's personal privacy under section 14(1)(f) of the *Act*.

The City also submits that although the factors in section 14(2) cannot be used to rebut a presumption that applies under section 14(3), other factors in section 14(2) might apply if the record existed, including sections 14(2)(d) and (f) of the *Act*. I understand the City's position to be that if sections 14(3)(e) and (f) do not apply to the record, its disclosure would still constitute an unjustified invasion of the affected party's privacy through a consideration of the factors set out in section 14(2).

With respect to the application of section 14(2)(f), the City argues that the disclosure of the personal information at issue in this record could reasonably cause the affected party "excessive distress". The City states:

In the circumstances of this appeal, there appears to be a family dispute involving the appellant and her mother's step daughter whose spouse is the individual whom the appellant has accused of being an imposter and of "misuse and abuse of identity theft." If the record existed and the personal information it contained (including the individual's home address and telephone number which may or may not be known to the appellant) were to be disclosed, the City believes that in the circumstances of this appeal, the disclosure could reasonably cause this individual "excessive distress".

With respect to the application of section 14(2)(d) the City submits:

The appellant has indicated that she needs the record to provide to the police. In the absence of any evidence provided by the appellant on this issue, it is difficult

to determine what weight should be given to this factor. In any event, a presumption under section 14(3) cannot be rebutted by any factors in section 14(2).

The appellant explains in her representations that she was involved in a civil proceeding regarding the ownership of her property with other family members. During that proceeding, one of the parties to the proceeding introduced into evidence a water and tax bill related to the property in dispute. This bill was in the affected party's name. Subsequently, the appellant made inquiries with the City and, as a result, discovered that a Change Request Form for the property was submitted in November of 2004 by the affected party. In the Change Request Form, the affected party purports to have acquired the property as a result of a purchase in October 2004. The appellant, who indicates that she held legal title to the property at that time, states that she reported the matter to the police. She also states that the police have indicated an intention to investigate and that she requires a copy of the form to pursue the matter. The appellant also states:

...I find [the City's] resistance reprehensible and unjust, why was I not protected from crime & prejudice? And why all these legal jargon excuses to cover up for criminal imposter. Please explaininviting identity theft of other's property & information.

Findings and Analysis

I now turn to consider the possible application of the presumptions of unjustified invasion of privacy in sections 14(3)(e) and (f). Those sections state:

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

(e) was obtained on a tax return or gathered for the purpose of collecting a tax;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

I have carefully considered the representations of the City and the appellant. In the course of my inquiry into this matter, I also obtained a title search for the property that is referred to in the record at issue in this appeal. As a result of the search of the title to the property in question, I determined that the affected party has no legal interest in the property at the present time, nor has he ever had a legal interest in the property. Furthermore, the search of the title also revealed that although there is currently a dispute over the ownership of the property, the affected party is not claiming an interest in the property as part of that dispute. The title search revealed that at the time that this record was filed with the City, the registered owners of the property included the

appellant. In my view, given these circumstances, the Change Request Form, filed by the affected party with the City, contains information that is likely false and misleading.

The appellant states that at no time did the City notify her or attempt to verify the accuracy of the information contained in the Change Request Form. The appellant states that after she discovered that the form had been filed by the affected party, she requested that the City make a correction to the information that was provided. The City did make the correction requested by the appellant and advised the appellant to report this matter to the authorities.

It is important to consider the purpose of the *Act* in the circumstances of this appeal. The purpose is described in section 1:

The purposes of this Act are,

(a) to provide a right of access to information under the control of institutions in accordance with the principles that,

(i) information should be available to the public,

(ii) necessary exemptions from the right of access should be limited and specific, and

(iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and

(b) *to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.* (emphasis added)

This is the context in which I now consider the application of the presumptions in section 14(3) of the *Act*. In my opinion, where the “personal information” provided to the institution is false and/or misleading, any finding by this office that presumptively protects the false and/or misleading “personal information” would be unfair to a victim of a potentially “fraudulent” act. Based on the unique circumstances of this case, I find that an individual is not entitled to submit false and/or misleading information to an institution and then use the *Act* as a shield to protect themselves from the consequences that might arise as a result of those actions. The presumptions in section 14(3) are designed to protect legitimate privacy interests, not those of individuals involved in inappropriate behaviour or who have provided misleading information in the guise of “personal information”. This is particularly true where, as in this case, the individual requesting the information has an interest in the property the information relates to.

Like other parts of the country, this province has experienced a growing problem of identity theft and identity fraud. It is common knowledge that much of the identity theft that we are

experiencing is relating to the sale and purchase of real property and the granting of mortgages on real property. In the 2006 Annual Report of the Office of the Information and Privacy Commissioner/Ontario, the Commissioner, Dr. Ann Cavoukian, stated:

Incidences of identity theft across North America increased exponentially during 2005. In fact, the problem has become so ubiquitous that a prominent American newspaper named 2005 the worst year for information security breaches ever, with at least 130 reported major breaches and close to 60 million affected persons.

Although the *Act* does not directly address the circumstances that are presented by the request for access in this particular appeal, I do not believe that the Legislature intended that an individual could rely on the presumptions in section 14(3) to protect him or herself from the consequences of inappropriate actions. In these circumstances, I find that the personal information on the Change Request Form was not “gathered for the purpose of collecting a tax” as is argued by the City. The information gathered had the effect of assisting the affected party in what appears to be a potentially fraudulent claim to ownership of real property. Any tax collected as a result of the form being completed by the affected party and filed with the city was illegitimate. Accordingly, I find that section 14(3)(e) does not apply to the personal information in the record.

I also find that section 14(3)(f) does not apply to the personal information in the record. The information does not in fact describe the affected party’s “finances, income, assets, liabilities, net worth, bank balance, financial history or activities or creditworthiness.” The only potential reference on the form to assets or financial activities is the suggestion that the affected party took possession of the property. As noted, this suggestion is false and/or misleading and therefore the affected party cannot rely on this section to exempt the information. In addition, as described above, the portions of the form relating to pre-authorized payment information and mortgage information is blank. I therefore find that the presumptions in section 14(3)(f) as well as 14(3)(e) of the *Act* do not apply in the circumstances of this appeal.

Section 14(2)

I now turn to consider the factors that are set out in section 14(2) of the *Act*. Although the City made submissions on the application of the factors set out in section 14(2)(d) and (f), I have also considered section 14(2)(a). Those sections state:

(2) 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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

(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;

Section 14(2)(a)

Previous orders of this office have found that simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purposes outlined in clause (a) [Order P-256]. I accept and adopt this approach to the application of this section.

In the circumstances of this request, the acceptance by the City of a change of ownership form regarding a purported purchase of a property without ensuring the accuracy of the information that is contained in the record is an action that should be subject to public scrutiny. This is particularly so given the rise in the number of incidents of identity theft and real property fraud. In the circumstances of this appeal, I find that this factor applies and give it significant weight.

Section 14(2)(d)

For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)]. I accept and adopt this approach for the purposes of this appeal.

I find that the appellant has provided clear and convincing evidence that she has satisfied all four requirements for the application of the factor in section 14(2)(d) and I give this factor significant weight. The appellant has provided evidence to demonstrate that she intends to provide this record to the police for the purpose of an investigation into the possibly fraudulent actions of the affected party. She has also provided evidence to suggest that the police require this record in order to conduct their investigation. Such an investigation may potentially lead to criminal proceedings, satisfying the requirement under section 14(2)(d) that a proceeding be either

existing or contemplated. I find therefore that the appellant has satisfied all four requirements for the application of the factor in section 14(2)(d).

Section 14(2)(f)

To be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518]. Although I accept that there is a reasonable expectation that the disclosure of the information in this record could reasonably be expected to result in significant personal distress to the affected party, I attribute little weight to this factor for two reasons. In my opinion, the affected party cannot rely on the personal distress that he might experience to shield himself from the consequences of a potential fraud. Any personal distress suffered by the affected party will be as a result of his actions, not the disclosure of the record. I also note that the affected party did not provide representations in this appeal. As a result, I believe that it is reasonable to conclude that the affected party's interest in the outcome of this appeal is minimal and he has little concern about the potential "distress" that he might experience as a result of the disclosure of this record.

Conclusion

Having considered all of the factors that apply in the circumstances of this appeal, I find that the factors that favour disclosure of the personal information in the Change Request Form deserve more weight than the one that supports the City's decision to withhold the record. Therefore, I find that disclosure of the record to the appellant does not constitute an unjustified invasion of privacy. Accordingly, the exception to the exemption found in section 14(1)(f) is established and the record is not exempt under section 14(1)(f) of the *Act*. As a result, the first requirement for the application of section 14(5) is not met.

Both requirements under section 14(5) which are set out above must be met for the section to apply. As I have found that the first requirement has not been met and it is not necessary for me to consider the second requirement for the application of section 14(5). Accordingly, I find that section 14(5) does not apply to the record at issue. The City is therefore not entitled to rely on this section to refuse to confirm or deny the existence of the record and it is appropriate to confirm the existence of the record.

I have also found that the section 14(1) exemption does not apply to the record. As no other exemptions have been claimed, I will order the City to disclose the record to the appellant.

ORDER:

1. I do not uphold the application of section 14(5) by the City.
2. I order the City to disclose the record to the appellant by sending her a copy on or before **October 5, 2007**.

3. As this order discloses the existence of records, I will not release it to the appellant until **September 28, 2007**.
4. I reserve the right to require a copy of the record disclosed pursuant to order provision 2 above.

Original Signed By: _____

Brian Beamish
Assistant Commissioner

August 29, 2007 _____