



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2238

Appeal MA07-37

City of Kawartha Lakes



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NATURE OF THE APPEAL:

The City of Kawartha Lakes (the City) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to “a copy of the formal written complaint regarding [the requester’s] property at [a specified address]”.

The City granted partial access to the responsive record. Access was denied to the name of the complainant pursuant to section 8(1)(d) (law enforcement) of the *Act*.

The requester (now the appellant) appealed the City’s decision. In his letter of appeal, the appellant states that he wants to know who complained “to verify that it is an actual complaint”.

During mediation, the appellant explained that he believes that the complaint is not legitimate because it was made by telephone and because he does not believe that anyone made a complaint. It is the appellant’s position that, if a complaint was made, it was made by a City employee, most likely a By-law Enforcement Officer.

During mediation, the City advised that the complaint was not made by a City By-law Enforcement Officer. This was communicated to the appellant.

The appellant maintains that he should be granted access to the name of the complainant.

As further mediation was not possible, the file was transferred to the Adjudication stage of the appeal process.

I decided to begin my inquiry by sending a Notice of Inquiry to the City, initially. The City submitted representations.

I then sent a Notice of Inquiry to the appellant, along with a copy of the City’s representations in their entirety. The appellant responded with representations.

RECORD:

The record at issue in this appeal is a one-page document entitled “Occurrence: 8691- Zoning” and is dated April 12, 2006. The only information that remains at issue in the record is the name of the complainant listed under the heading “contact name”.

DISCUSSION:

LAW ENFORCEMENT

The City submits that the discretionary exemption at section 8(1)(d) applies to the information at issue.

Section 8(1)(d) reads:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

The term “law enforcement” is used in section 8(1)(d), and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

The term “law enforcement” has been found to apply to a municipality’s investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Where section 8(1)(d) uses the words “could reasonably be expected to”, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

For section 8(1)(d) to apply, the City must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances [Order MO-1416].

Representations

The City submits that section 8(1)(d) applies to exempt the information from disclosure because release of the information could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source. The City submits:

The telephone complaint received on [specified dated] was recorded on the City's *Vtiger CRM* complaint form as "Occurrence 8691-Zoning". The complainant's name was recorded on the first part of the form under "Contact Name". This complaint initiated a process whereby a Municipal Law Enforcement Officer investigated the complaint and inspected the property for by-law infractions. Most complaints to our Municipal Law Enforcement Department are received over the phone and employees are instructed to advise complainants that their identity and the information they provide will be treated as confidential. It is the established practice of the City never to release name(s) of sources of information in respect of law enforcement matters and people would be less inclined to make a complaint if they knew their identity and the information they provide will be treated as confidential. A copy of the City's MLEO (Municipal Law Enforcement Office) complaint form and a copy of the City's Municipal Law Enforcement website page are attached. Both of these documents clearly state that the names of all complainants are confidential. Since the amalgamation of the City in 2001, the City has maintained a consistent policy of keeping the names of complainants confidential with respect to by-law enforcement matters. The reason the by-law complaint process has always guaranteed the confidentiality of the complainants' identities is to ensure the complainants, on whom we rely to identify by-law infractions, will continue to provide this assistance to us. Any departure from this policy would gravely jeopardize our by-law enforcement system. As such, we believe the provisions of section 8(1)(d) apply to the record as law enforcement proceedings may result and the complaint was made in confidence.

The appellant submits that the appeal is a result of many misrepresentations made to him by the City. He submits that initially it was indicated that a formal written complaint regarding his property had been filed with the City. He submits that when he specifically asked whether the complaint was in writing, he was told that it was. He also submits that when he asked whether he could have a copy of the complaint he was told that he had to file an access to information request to receive the information. The appellant submits that it was only during mediation that he learned that the complaint was actually made by telephone. The appellant's main concern is that he wishes to confirm that this "is an actual complaint and that someone did not just call in with a fake name and address." The appellant takes the position that because the matter relates to him, it is his personal right to have access to the name of the complainant.

Analysis and finding

As noted above, previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the *Act*. I agree with those orders and adopt their finding for the purposes of this appeal.

I have reviewed the record and considered the representations of both parties. The record in this appeal addresses an alleged infraction of the City's zoning By-law 94-07. Therefore, I find that it relates to a law enforcement matter, as defined in section 2(1). I also find that the City has established that the complainant had a reasonable expectation that his or her identity would remain confidential in the circumstances. Finally, I find that disclosure of the name of the complainant would reveal his or her identity.

Accordingly, I find that disclosure of the information at issue could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter.

Although I understand that the appellant feels that because the complaint relates to him he ought to be entitled to the name of the complainant, he does not address whether the information would reveal the identity of a confidential source of information. The appellant's representations focus on why he ought to be entitled to access to the information and why withholding the information from him would be unjust. I reiterate that all of the information contained in the record has been provided to the appellant, save the complainant's name.

Having found that the disclosure of the complainant's name would reveal the identity of a confidential source of information in respect of a law enforcement matter, I find, therefore, that this information qualifies for exemption under section 8(1)(d).

Exercise of discretion

The section 8(1)(d) exemption is discretionary, and permits an institution to disclose information despite the fact that it could withhold it. On appeal, an adjudicator may review the institution's decision to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

As I have upheld the City's decision to apply section 8(1)(d) to the information at issue, I must now review the City's exercise of discretion in determining not to release that information. I may find that the City erred in its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations. In these cases, I may send the matter back to the City for an exercise of discretion based on proper considerations [Order MO-1573]. However, I may not substitute my own discretion for that of the City.

The City submits that in refusing to disclose the information at issue it considered all of the relevant factors, including the following:

- Access was provided to the requested record with the exception of the name of the person who made the complaint.
- There is a reasonable expectation of confidentiality within the City's by-law enforcement process.
- Release of confidential source of information would undermine the City's ability to effectively investigate by-law infractions.
- People would be less likely to make complaints if they knew their identity would not be anonymous.

Having reviewed the City's submissions and having considered all of the circumstances of this appeal, including the information that was disclosed to the appellant prior to the appeal and the specific piece of information that has been severed from the record, I am satisfied that the City has not erred in its exercise of discretion by withholding that information. Therefore, I find that the City's exercise of discretion was reasonable.

ORDER:

I uphold the decision of the City.

Original Signed by: _____
Catherine Corban
Adjudicator

_____ October 23, 2007