



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2322**

**Appeal MA06-314**

**The City of London**



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## **NATURE OF THE APPEAL:**

The City of London (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to a dog attack incident that occurred at a specific time and location.

The request to the City included the following:

Need owner's identification for collection of costs for veterinary care under Dog Owner's Liability Act. Dog running loose not muzzled but was under a muzzle order due to previous attacks....

The City located a responsive record and issued a decision which stated that access to the record was denied in order to protect the personal privacy of the owner of the biting dog. The City claimed the application of the mandatory personal privacy exemption in section 14(1) of the *Act*. The requester (now the appellant) appealed the City's decision.

During mediation, the City explained that the record in dispute was collected under the Dog Licensing & Control By-Law, a municipal by-law, as part of an investigation into a possible violation of the law. The City further explained that it contracts with a third party provider, London Animal Care & Control (LAC&C), to look after animal control. In the present circumstances, LAC&C conducted an investigation of the incident reported by the appellant on behalf of the City. The City also indicated that LAC&C is considered a law enforcement body and that records created during the investigation are exempt from disclosure by virtue of the application of the presumption in section 14(3)(b) of the *Act* which addresses personal information compiled as part of a law enforcement investigation.

Mediation did not resolve the issues in this appeal. Accordingly, the file was forwarded to the adjudication stage of the process. I decided to initially seek representations from the City through the issuance of a Notice of Inquiry. The City submitted representations, the non-confidential portions of which were shared with the appellant, along with a Notice of Inquiry. The appellant submitted representations in response to the Notice.

## **RECORD:**

The record is a one-page printout from the LAC&C's database containing fields showing the animal control identification number of the dog involved in the incident, as well as the names and addresses of two individuals, identified at the "Registered Owner" and "Co-owner" respectively. The telephone number of the registered owner is listed as well as the relationship between the registered owner and the co-owner. The record also contains fields showing enforcement related notes. The entries in the 'Notes' field is not at issue in this appeal since they are not responsive to the request.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **General principles**

The City submits that the record is exempt under the mandatory personal privacy exemption in section 14(1). In order for the information in the record to qualify under section 14(1), it must meet the definition of “personal information” contained in section 2(1) of the Act. 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.)].

In its representations, the City argues that the printout, consisting of the name of two individuals, as well as the address, telephone number, and family status information of those individuals is personal information within the meaning of the definition of that term in section 2(1) of the *Act*.

I find that the record contains the name and address of two individuals as well as the phone number of one of the individuals. By being named in this printout, the two individuals are also identified as the co-owners of a dog that was the subject of an investigation as a result of the incident involving the appellant. I conclude that the record contains information which meets the definition of “personal information” in paragraphs (d) and (h) of the definition in section 2(1). Therefore, I agree with the City that the information contained in the record is personal information which relates to two individuals other than the appellant.

## **PERSONAL PRIVACY**

Where a requester seeks the personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. In the circumstances, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. 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].

As stated above, in deciding that the disclosure of the record would be an unjustified invasion of personal privacy, the City relied on the presumption found in section 14(3)(b) of the *Act*, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

The City provided me with a copy of City of London By-law PH-4, entitled: “A *by-law to provide for the Regulation, Restriction and Prohibition of the Keeping and Running at Large of Dogs in the City of London*” (the *By-law*). The *By-law* provides for the licensing and keeping of dogs in the City and for the enforcement of certain prohibited activities. Section 4-10 of this *By-law* prohibits dog owners from allowing their dogs to run at large. Any person who contravenes any of the provisions in the *By-law* is guilty of an offence and is liable to a penalty upon conviction.

The incident involving the appellant resulted in an Animal Control Officer from the LAC&C being called. In its representations, the City stated that, as a result of an investigation by the Animal Control Officer, the biting dog owners’ personal information, including their names, address and telephone number, was compiled in the Animal Control Officer’s report and then entered into the London Animal Centre’s database. This information constitutes the record at issue.

The appellant in this appeal is the owner of a dog that was the victim of the attack. From the evidence submitted by the appellant, her dog was seriously injured in the incident. The appellant states:

It is our position (that) this request for information is not an unlawful invasion of privacy (but) merely a necessity to enforce the statutory obligations of this dog owner. My client has been advised that this owner has not accepted liability for the previous attacks and continues to flaunt the law by allowing this dog to run free and not be muzzled. It is time this owner be held accountable for his actions and those of his dog.

In Order MO-1598, Adjudicator Rosemary Muzzi addressed the application of section 14(1) and the presumption in section 14(3)(b) to similar records in the following manner:

It is clear to me that the information contained in the records at issue was compiled and is identifiable as part of an investigation into alleged violations of the law. Orders of this office have previously established that personal information relating to investigations of alleged violations of municipal by-laws falls within the scope of the presumption provided by section 14(3)(b) of the Act (Orders M-382 and M-181). Indeed, the evidence before me is that an investigation was undertaken and orders were made against and penalties imposed upon the appellant, in relation to his dog, based upon the information contained in the records at issue.

I have great sympathy for the appellant's position. However, I am constrained by the provisions of the *Act* and how those provisions have been interpreted, particularly in *John Doe v. Ontario (Information and Privacy Commissioner)*, referenced above. I find that the personal information contained in the record was compiled as part of an investigation into a possible violation of the *By-law*, and therefore falls within the ambit of the presumption in section 14(3)(b). The appellant has not raised the application of any of the exceptions in section 14(4) nor has she raised the possible application of the 'public interest override' provision in section 16. As a result of finding that the record at issue meets the requirements of the presumption in section 14(3)(b), I am satisfied that its disclosure would result in an unjustified invasion of the other individuals' personal privacy. As a result, the information is exempt from disclosure under section 14(1) of the *Act*.

Despite this finding, I do not condone of the conduct of the attacking dog's owner, nor does this finding suggest that the owner of a dog which injures another dog should escape liability. The appellant indicates that she is seeking the record at issue in order to re-coup her veterinary expenses resulting from the dog attack. She also indicates that she has attempted to locate the information through other processes. I accept that the appellant has legitimate concerns which the *Act* cannot address in this appeal. I note that section 51 of the *Act* provides:

- (1) This *Act* does not impose any limitation on the information otherwise available by law to a party to litigation.
- (2) This *Act* does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

This section of the *Act* has been considered in a number of previous orders (see, for example: Orders P-609, M-852, MO-1109, MO-1192 and MO-1449). In Order MO-1109, former Assistant Commissioner Tom Mitchinson commented on this section as follows:

Accordingly, the rights of the parties to information available under the rules for litigation are not affected by any exemptions from disclosure to be found under the *Act*. Section 51(1) does not confer a right of access to information under the *Act* (Order M-852), nor does it operate as an exemption from disclosure under the *Act* (Order P-609).

Former Commissioner Sidney B. Linden held in Order 48 that the *Act* operates independently of the rules for court disclosure:

This section [section 64(1) of the provincial *Freedom of Information and Protection of Privacy Act*, which is identical in wording to section 51(1) of the *Act*] makes no reference to the rules of court and, in my view, the existence of codified rules which govern the production of documents in other contexts does not necessarily imply that a different method of obtaining

documents under the *Freedom of Information and Protection of Privacy Act, 1987* is unfair ...

With respect to the obligations of an institution under the *Act*, the former Assistant Commissioner stated:

The obligations of an institution in responding to a request under the *Act* operate independently of any disclosure obligations in the context of litigation. When an institution receives a request under the *Act* for access to records which are in its custody or control, it must respond in accordance with its statutory obligations. The fact that an institution or a requester may be involved in litigation does not remove or reduce these obligations.

The Police are an institution under the *Act*, and have both custody and control of records such as occurrence reports. Therefore, they are required to process requests and determine whether access should be granted, bearing in mind the stated principle that exemptions from the general right of access should be limited and specific. The fact that there may exist other means for the production of the same documents has no bearing on these statutory obligations.

I agree with the above comments. In this case, the fact that information must be withheld under the *Act* does not impinge on the appellant's ability to obtain the relevant information through the disclosure mechanisms available to her in a civil proceeding, which may enable her to obtain the information she is seeking.

**ORDER:**

I uphold the City's decision.

Original signed by: \_\_\_\_\_  
Brian Beamish  
Assistant Commissioner

\_\_\_\_\_  
June 18, 2008