



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2251

Appeal MA-040144-2

City of Toronto



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NATURE OF THE APPEAL:

This appeal arises as a result of the decision by the City of Toronto (the City) to disclose a record to a requester under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester had asked the City for access to the total amount of money owed by him as a result of his sponsorship default. The City decided to disclose the requested information to the requester and notified the sponsored person (the third party appellant) of its decision to do so. The third party appellant appealed the City's decision and as a result, this file (MA-040144-2) was opened.

The requester had sponsored the immigration of the third party appellant to Canada according to the terms of Citizenship and Immigration Canada's Sponsorship Agreement. Under the terms of that agreement, and as a result of his sponsorship default, the requester is obliged to repay any social assistance benefits paid to the third party appellant. The request, therefore, relates to the amount of money the requester owes as a result of the social assistance benefits the third party appellant received.

This file is the second appeal file opened by this office as a result of the third party appellant appealing a decision of the City to disclose a record to the requester, resulting from the same request. The first appeal (MA-040144-1) was resolved by Order MO-1906. Due to the nature of the issues in this appeal, I will review the history of this matter, and will also review other orders which address a similar issue (Orders MO-2126-I and MO-2136-F).

Background

Appeal MA-040144-1 (Order MO-1906)

In appeal MA-040144-1, a request was submitted to the City under the *Act* for access to the total amount of money owed by the requester as a result of his sponsorship default. The City decided to disclose the requested information to the requester and notified the third party appellant of its decision to do so.

The third party appellant objected to the disclosure of the information and appealed the City's decision. Appeal file MA-040144-1 was opened, which concluded with the issuance of Order MO-1906. In Order MO-1906, I did not uphold the City's decision to disclose the requested information to the requester.

However, in appeal MA-040144-1, the record at issue was described as follows:

... a list of the payments made by the City to the [third party appellant], and contains the [third party appellant's] name, date of payment, benefit month, amount paid and type of payment.

In Order MO-1906, I found that the record at issue contained the personal information of the third party appellant, and did not contain the personal information of the requester. After reviewing the issues, I determined that disclosure of the record to the requester was presumed to constitute an unjustified invasion of the privacy of the third party appellant and was, therefore, exempt from disclosure under section 14(1).

I also addressed the City's position that the third party appellant had consented to the disclosure of her information to the requester for the purpose of section 14(1)(a) of the *Act*, as she would have signed an agreement to consent to the disclosure of the information to the sponsor/requester as a condition of her sponsorship. In MO-1906, I made the following finding when I addressed that issue:

In the circumstances of this appeal under the *Act*, based on the position taken by the [third party appellant] that she does not consent to the disclosure of her personal information, I find that the exception in section 14(1)(a) has no application.

Accordingly, I found that the information contained in the record qualified for exemption under section 14(1) of the *Act*, and I did not uphold the City's decision to grant access to the record.

Other orders addressing a similar issue - Orders MO-2126-I and 2136-F

In a subsequent appeal involving different parties (appeal MA-050117-1), issues similar to those in Order MO-1906 were addressed. That appeal also arose as a result of a request to the City by a sponsor for access to information relating to social assistance payments made to a sponsored person. In that case, based on Order MO-1906, the City denied access to the record. However, the record in that appeal was different from the one at issue in Order MO-1906, and is described in Order MO-2126-I as follows:

The record at issue in this appeal is a letter prepared by the City, which has been created in response to the ... request. The letter (which has not been sent) is addressed to the [requester] 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]. ...

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.

After inviting representations from the parties and reviewing the issues, I found that the record described above contained both the personal information of the requester, as well as the personal information of the affected person.

I again found that the disclosure of the personal information of the affected person would be presumed to constitute an unjustified invasion of her privacy. However, I also reviewed the

City's exercise of discretion in that appeal. The City had stated that, as a result of Order MO-1906, it could **not** disclose the record. I did not agree with the City, and stated:

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.

The City then re-exercised its discretion and chose to disclose the record to the requester. I upheld that decision in Order MO-2136-F.

The Current Appeal (MA-040144-2)

The above information is provided as background to the current appeal.

In the current appeal, the City's decision reads as follows:

In light of the recent orders issued by the IPC related to another appeal case similar to yours, this office has reconsidered and revised its decision. This office intends to release the information to the requester in keeping with Orders MO-2126-I and MO-2136-F. The information to be disclosed to the requester would be the total amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto which is [an identified amount].

The third party appellant appealed the City's decision.

Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I decided to send a Notice of Inquiry to the third party appellant, initially. In the Notice of Inquiry I sent to her, I noted that the City had indicated that its decision was to disclose to the requester the total amount to be reimbursed [by the requester] to the City. I also noted that, although this appeal arises from the same request as resulted in Order MO-1906, the record at issue is different than the one described in that order. As a result, I stated that the record at issue in this appeal may contain the personal information of both the requester and the third party appellant, and I identified that the invasion of privacy exemption in section 38(b) was raised as a possible issue in this appeal.

In the Notice of Inquiry, I also invited the third party appellant to address the issues in light of the previous orders issued by this office (Orders MO-1906, MO-2126-I and MO-2136-F), and in light of the circumstances of this appeal, where the record at issue is different from the one that was at issue in Order MO-1906. I attached copies of those orders to the Notice of Inquiry.

The third party appellant provided representations in response to the Notice of Inquiry. I have decided it is not necessary to seek representations from the City and/or the requester prior to issuing this order.

RECORD:

The record at issue in this appeal consists of a dollar figure representing the total amount of General Welfare/Ontario Works Assistance to be reimbursed [by the requester] to the City. More specifically, the City has confirmed that the record at issue in this appeal is a letter prepared by the City, which has been created in response to the request. The letter (which has not been sent) is addressed to the requester and states:

I am replying to your request for access to the amount of Ontario Works Assistance that has been issued to [the named third party appellant]. ...

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 record at issue, a one-page letter prepared by the City and created in response to the request, contains information relating to the amount owed by the requester to the City. I am satisfied that it contains the personal information of the requester 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 third party appellant including her name, as well as other personal information relating to her (paragraph 2(h)). Specifically, this includes the fact 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 requester, which I find to be her personal information, as well as that of the requester.

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).

In Order MO-2126-I, I reviewed the application of the presumed unjustified invasion of privacy found in section 14(3)(c) to information contained in a record similar to that at issue in this appeal. Section 14(3)(c) reads:

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

In Order MO-2126-I, I found that an 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". I make the same finding in this appeal. Accordingly, the disclosure of the personal information is presumed to constitute an unjustified invasion of the third party appellant's privacy.

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) (*John Doe v. Ontario (Information and Privacy Commissioner)* (cited above)). The record is, therefore, exempt under section 38(b); however, as I did in Order MO-2126-I, I will review the City's discretionary decision to disclose the record to the requester in the circumstances of this appeal.

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

As identified above, the City exercised its discretion to disclose the requested information to the requester. The City's decision states:

In light of the recent orders issued by the IPC related to another appeal case similar to yours, this office has reconsidered and revised its decision. This office intends to release the information to the requester in keeping with Orders MO-2126-I and MO-2136-F. The information to be disclosed to the requester would be the total amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto which is [an identified amount].

With respect to the manner in which the City exercised its discretion, the City states that it decided to release the requested information (in the form described above), based on the reasoning contained in Orders MO-2126-I and MO-2136-F. Those orders refer to a number of factors that the City considered in deciding to disclose the record in that appeal, which is similar to the record at issue in this appeal. The identified factors include:

- 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 ... 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.
- The only personal information of the sponsored person 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 specific purposes of the exemptions in section 38(b) in conjunction with 14(1)(f) and 14(3)(c).

The City summarized its position in MO-2126-I by stating that the amount of the reimbursement owed by a defaulting sponsor should be disclosed to him. The City believed that such a disclosure would not be an unjustified invasion of the personal privacy of the sponsored person and, further, that the right of the requester to access this information clearly outweighs any privacy rights that might exist.

The third party appellant in this appeal has provided representations in support of her position that the requested information should not be disclosed to the requester, as the disclosure would be an unjustified invasion of her personal privacy. In her representations, the appellant identifies a number of the concerns she has about providing the requester with personal information relating to her. She also provides details regarding issues and incidents that have occurred between her and the requester, and attaches to her representations documentation supporting the information she provides in her representations.

Findings

I have carefully reviewed the appellant’s representations in light of the nature of the record at issue in this appeal. It is clear that the appellant strongly objects to the disclosure of any of her personal information to the requester, and that the dealings between the third party appellant and the requester have not always been pleasant. However, in my view the third party appellant has not provided considerations which are relevant to the disclosure or non-disclosure of the record at issue in this appeal. The factors referred to by the third party appellant are general in nature, and relate to her concerns about personal information. She does not refer to the specific, limited information contained in the sole record at issue in this appeal, nor to the fact that the information requested is also the amount of debt owed *by the requester*. At one point in her representations the third party appellant refers to concerns about the veracity of information; however, in my view the disclosure of the information contained in the record would, if anything, assist in confirming the veracity of information regarding amounts owed by the requester, and may, in fact, be a factor favouring disclosure.

In summary, on my review of the representations of the third party appellant, I am not satisfied that they raise relevant considerations favouring non-disclosure of the record. Accordingly, based on the information provided by the City and the third party appellant, I find nothing improper about the manner in which the City exercised its discretion in favour of disclosing the record to the requester.

Additional Matter

In this order I am upholding the decision of the City to disclose the identified record to the requester notwithstanding that, in Order MO-1906 (which resulted from the same request), I had found that the particular information contained in the record in that appeal qualified for exemption under section 14(1) of the *Act*, and I did not uphold the City's decision to grant access to the record. I have made a different decision in this appeal because, in my view, the circumstances in the appeal resulting in Order MO-1906 were considerably different than the ones in this appeal. 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 record requested in this appeal contains only the individual's name and the amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto by the requester on her behalf.
- The requested record in MO-1906 contained only the personal information of the sponsored person, and section 38(b) was not an issue. The record requested in this appeal contains the personal information of both the sponsored person and the requester, and section 38(b) is the exemption at issue.
- The issue in Order MO-1906 related primarily 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*. That is not an issue in this appeal.
[see also Order MO-2126-I]

In addition, in Order MO-2126-I, I included a postscript which addressed the manner in which the City had responded to the request in that appeal. The postscript read:

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.

I affirm the statements I made in the postscript of Order MO-2126-I.

ORDER:

I uphold the decision of the City, and order the City to disclose the record to the requester by **January 18, 2008** but not before **January 14, 2008**.

Original signed by: _____
Frank DeVries
Adjudicator

_____ December 14, 2007