



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2350**

**Appeal MA08-190**

**City of Vaughan**



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## **NATURE OF THE APPEAL:**

The City of Vaughan (the City) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to information relating to the identity of a complainant.

The City located the responsive record and denied access to it pursuant to sections 8 (law enforcement) and 14(1) (personal privacy) of the Act. The City also advised that part of the information contained in the responsive record is exempt from disclosure as it is not responsive to the request.

The requester, now the appellant, appealed the City's decision.

During the course of mediation, the appellant clarified that she wished to find out who filed a complaint relating to the removal of firewood from her property. The mediator notified the complainant for the purpose of obtaining their consent to disclose their identity to the appellant. The complainant would not consent to the disclosure of their personal information to the appellant.

As mediation was not successful in resolving the issues in this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the City initially, seeking its representations. I received representations from the City. I sent a complete copy of the City's representations to the appellant, along with a Notice of Inquiry. I received representations in response from the appellant.

## **RECORDS:**

The information at issue in this appeal consists of the name, address and telephone number of a complainant that appears in a specified call summary report.

## **DISCUSSION:**

### **LAW ENFORCEMENT**

The City relies on sections 8(1)(d) and 8(2)(a). I will first determine whether the discretionary exemption at section 8(1)(d) applies to the record.

Section 8(1)(d) states:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
  - (d) 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 several parts of section 8, 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 in the case of:

- 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 City 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.)].

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].

The City submits that:

The City of Vaughan received a telephone complaint that related to the storage of firewood on the appellant’s property. In the circumstances of this appeal, the complainant had provided their name, address and phone number. This information is recorded on the Call Summary Report. If disclosed, the record would disclose the identity of a confidential source. The complainant was advised by the Enforcement Services Department staff that their complainant information would be kept confidential by the City of Vaughan and not disclosed to the property owner...

The complaint initiated a process whereby an inspector would investigate the complaint and inspect the property for by-law infractions. The complaint was assigned to a Provincial Offences Officer. The Officer’s on-site inspection

confirmed that there was a property standards violation under 3.2.1 Section 7 of the City of Vaughan By-law being a by-law to provide standards for the maintenance and occupancy of property. The Provincial Offences Officer records their findings in a Call Summary Report. In the circumstances of this complaint, the Officer prepared a Property Standards Order. This Order was sent to the property owner and the owner was requested to bring the property into compliance within a specified period of time. Upon expiry of the specified period of time, the Provincial Offences Officer would again inspect the property for compliance. The property owner complied with the Order. The Provincial Offences Officer recommended to the Supervisor of Enforcement Services that the file be closed... In cases where the property owner does not comply with a Notice of Violation, the Provincial Offences Officer may lay charges pursuant to the by-law and the *Provincial Offences Act*. These charges are dealt with by either the Provincial Offences Court or by the Ontario Court (Provincial Division). For the purposes of by-law prosecution proceedings, the complainant is the City of Vaughan. An independent and objective City employee carries out an inspection or investigation to investigate the initial complaint. If circumstances warrant prosecution, this inspector is the “complainant” and is available to the defendant/owner for cross-examination both before and during the court proceedings.

The assurance of confidentiality to complainants is an important element in the City of Vaughan’s by-law enforcement process and the disclosure of the names of the complainants would jeopardize the effectiveness and integrity of the by-law enforcement process. The physical distancing of telephone complaints, the assurances of confidentiality by the institution, together with the expectation of confidentiality by the public, is an integral part of the institution’s by-law enforcement process and serves to maintain the effectiveness of this process. It is the practice of the Enforcement Services Department to treat complaints in a confidential manner and that any departure from this would gravely jeopardize its bylaw enforcement process...

It is the City of Vaughan’s position that the institution’s process of by-law enforcement involves investigations or inspections which could lead to proceedings in a court of law where penalties could be imposed and, therefore, qualifies as “law enforcement” under the *Act*.

The appellant did not address the issue of whether the information at issue in the record would reveal the identity of a confidential informant in respect of a law enforcement investigation. The appellant submits that because the complaint relates to her property she ought to be entitled to know the identity of the complainant. Her representations focus on why access to the information would be emotionally helpful to her.

## **Analysis/Findings**

As noted above, previous orders 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 I find that the record concerns an alleged infraction of the City's property standards by-law. 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 their identity would remain confidential in the circumstances. Finally, I find that disclosure of the name, address and/or the telephone number of the complainant would reveal their 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.

Having found that the disclosure of the complainant's name, address and telephone number 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**

I will now determine whether the City exercised its discretion in determining not to release the information at issue, and if so, whether I should uphold this exercise of discretion. The section 8(1)(d) exemption is discretionary, and permits the City to disclose information despite the fact that it could withhold it.

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.

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 submits that:

[It] considered whether or not the requester was requesting his or her own personal information. This did not apply. The City of Vaughan considered whether or not the requester has a sympathetic or compelling need to receive the record. This did not apply. The City of Vaughan determined that the need to protect the identity of the complainant outweighed the requester's compelling need for the record.

The appellant did not address this issue directly in her representations.

### **Analysis/Findings**

Having reviewed the City's submissions and having considered all of the circumstances of this appeal, I am satisfied that the City exercised its discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations, in withholding the information at issue. Therefore, I find that the City's exercise of discretion was reasonable.

As I have found that the information at issue is exempt by reason of section 8(1)(d) of the *Act*, it is not necessary for me to also consider whether the law enforcement exemption at section 8(2)(a), or the personal privacy exemption at section 14(1), also apply to exempt this information.

**ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ October 15, 2008