



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2405**

**Appeal MA08-153**

**City of Toronto**



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## NATURE OF THE APPEAL:

The City of Toronto (the City) received a five-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to information. The access request reads as follows:

Please do consider this request along with the attached relevant and signed form. It is with respect to any handwriting, typing-writing, computer-data, video, voice and digital records that have been [talking] about me during my transition phase at our City of Toronto (CT)'s O'Neill Transitional Programme (ONHP). The ONHP is located at [specified address], Toronto, and these records are for the period from June 24<sup>th</sup>, 2007 to this very fateful day of my request. The relevant venues with my records are the:

- A- General and Personal Information (GPI) from the shelter environment
  - 1. Seaton House (SH) Management and Personnel Offices
  - 2. Fusion Care Services Unit (FCSU) Office; and
  - 3. ONHP Management and Personnel Offices
  
- B- GPI from Shelter, Support and Housing Administration Division (SSHAD) at Metro Hall (MH)
  - 1. Office of CT Employee [named] Hostel Clientele Services Supervisor at the MH SSHAD;
  - 2. Office of CT Employee [named], General Manager at the MH SSHAD
  - 3. Office of the Hon. City Mayor [named] at the City Hall;
  - 4. Office of Hon. City Manager [named] at the City Hall;
  - 5. Office of Hon. City Auditor General [named] at the MH; and
  - 6. Office of the Hon. City Integrity Commissioner [named] at the MH
  
- C- GPI from the Hon. City Councillors' Offices

...
  
- D- GPI from the agency and Hon. Members of Parliament (MPs)' Offices

...
  
- E- Personal and Health Information (PHI) from Hospitals

The City issued a decision letter denying access to the records from the Integrity Commissioner's Office and the Auditor General's Office, on the basis that these records are exempt from the Act pursuant to the *City of Toronto Act*. With respect to the records from the Chief Administrative Officer, the City advised that after a search for responsive records was conducted, none were found and, therefore, it concluded that no responsive records existed.

The City granted access in full to the records located in the Mayor's office and to the "resident file". Partial access was granted to records maintained by the Shelter, Support and Housing Administration Division of the City of Toronto, namely:

1. Records located in the General Manager's office
2. Records located in the Director, Hostel Services' office
3. Records located in the Hostel Services Supervisor's office
4. CAISI notes (electronic resident case notes) in Seaton House, Fusion Care and O'Neill House
5. Correspondence in Seaton House, Fusion Care and O'Neill House

The City claimed that some of the information in the records and some of the records in their entirety were exempt pursuant to sections 13 (threat to safety or health) and 38(b) (personal privacy) of the *Act*.

The requester (now the appellant) appealed the City's decision.

During mediation, the City confirmed that it had previously issued a decision with respect to parts C, D, and E of the appellant's request in which it explained that it did not have "care or custody" of the responsive records. The appellant advised the Mediator that the information requested under parts C, D, and E of his request is not at issue in this appeal. The appellant also stated that he is not appealing the City's decision regarding records from the Offices of the Integrity Commissioner, the Auditor General and the Chief Administrative Officer. As a result, part A of the request is at issue in this appeal as well as part B, with the exception of those portions relating to the Integrity Commissioner, the Auditor General and the Chief Administrative Officer.

As no further mediation was possible, this matter was moved to the inquiry stage of our appeal process. I began my inquiry into this appeal by issuing a Notice of Inquiry inviting the City to submit representations on the facts and issues set out in the notice. I received representations from the City. I then issued a Notice of Inquiry to the appellant and invited him to submit representations in response to the representations of the City and to comment on the facts and issues set out in the notice. A copy of the City's representations was provided to the appellant although portions were withheld for confidentiality reasons. In response, the appellant submitted representations on three separate occasions. After reviewing those representations, I decided that it was not necessary to share them with the City nor was it necessary to invite reply representations.

Although the appellant did submit voluminous representations, they are not relevant to the issues in this appeal. They consist of a summary of the appellant's grievances with a number of individuals, some of which are entirely unrelated to the appellant's stay at the City's supported housing facilities. In my view, they do not address the issues in this appeal or matters that are within the jurisdiction of this office.

## **RECORDS:**

The information at issue consists of records and portions of records such as e-mails, written correspondence, complaint files and resident case notes maintained by the Shelter, Support and Housing Administration Division of the City of Toronto.

## **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;

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.)].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

With respect to the records at issue, the City submits that they contain the personal information of the appellant, staff of the supported housing units and other individuals who are residents of the supported housing units in which the appellant resides. The City argues that this personal information includes the views and opinions of a supervisor about an employee and the views and opinions of staff about the appellant and his interaction with others. It argues that it also includes the names of other residents, their views of the appellant and information relating to their activities.

### **Analysis and Findings**

The City's representations include the background information that assists in determining whether the records contain personal information. It states that the Shelter, Support and Housing Administrative Division provides shelter and assistance to homeless individuals and families with children. One residence, known as Seaton House, has 600 beds and offers shelter for homeless men and a range of programs including support in dealing with alcohol, drug or serious mental health issues, and long term assistance for older men and men living with disabilities. Another residence, known as O'Neill House, has 40 beds, 22 of which are on the second floor. It provides assistance to men whose needs are more challenging than those residing at Seaton House.

The appellant was a resident at Seaton House and was subsequently transferred to the O'Neill House Transition Unit, which is located on the second floor where I am advised he continues to reside today.

I find that all the records contain the personal information of the appellant including information relating to his age and his national or ethnic origin (paragraph (a)), his health (paragraph (b)), his

address and telephone number (paragraph (d)), the views or opinions of staff about the appellant (paragraph (g)) and his name along with information about his residence and activities at the City's supported housing facilities (paragraph (h)).

I note that some of the records also contain the personal information of other residents of the City's supported housing facilities including their names and information about their activities at the housing facilities (paragraph (h)).

The records also include the personal information of two City employees. This information includes a personal comment about an employee's activities outside the employment context. I am satisfied that this is personal information as it appears in a personal context and reveals information of a personal nature about the employee. Some of the records also contain information relating to the views and opinions of an employee's supervisor about the employee's work and allegations of improper conduct that were made against the employee. Previous orders of this office have found that information about individuals in their professional or employment capacity may qualify as their personal information if it involves an evaluation of that individual's performance as an employee or an investigation into his or her conduct as an employee [see Orders P-1318, PO-2524, MO-2395]. I agree with this approach and find that the information regarding the conduct of this employee is personal information as its disclosure would reveal something inherently personal about this employee.

#### **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/THREAT TO SAFETY OR HEALTH**

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information. In this case, the institution relies on section 38(a) in conjunction with section 13.

Section 13 states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected" to lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)]. The term "individual" is not necessarily confined to a particular identified

individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

The City submits that disclosure of some of the information relating to the other residents of the assisted housing facility could cause unreasonable distress and irreparable harm to the well being of these individuals, both mentally and physically. The City submits that these individuals are vulnerable and many of them suffer from mental health issues. The City also submits that disclosure of the information relating to the employee of O'Neill House, with whom the affected party has had a confrontational relationship, could cause the employee stress and threaten the mental and even physical well being of that employee. The City also argues that disclosure of the records that only contain the personal information of the appellant could adversely impact the appellant's mental health and could result in a further escalation of the health and safety issues related to him.

As noted above, portions of the City's representations were not shared with the appellant for confidentiality reasons. I do not intend to refer to these portions of the representations in this order for the same reasons. I should note, however, that I have considered these confidential representations in arriving at my decision below.

### **Analysis and Findings**

I note that a significant amount of information has already been disclosed to the appellant by the City at the request stage of this appeal. I have carefully reviewed the records and portions of records that have been withheld and the City's representations, including the confidential portions. I am satisfied, based on the information before me, that all of the information in the records that has been withheld, pursuant to section 38(a) in conjunction with section 13 of the *Act*, is exempt as disclosure of this information could reasonably be expected to seriously threaten the safety or health of the staff working in the City's supported housing facilities and the other residents of those facilities whose personal information appears in the records.

In Order PO-1940, Adjudicator Laurel Cropley found that section 20 (the provincial equivalent of section 13) applied to deny records to an appellant who engaged in a pattern of intimidating correspondence with an institution. While the circumstances of this appeal are different from those present in Order PO-1940, Adjudicator Cropley's comments are applicable. In that order, she stated:

Where an individual's behaviour is such that the recipient *reasonably perceives* it as a "threat" to his or her safety, the requirements of this section have been satisfied. As the Court of Appeal found in *Ontario (Ministry of Labour)*:

It is difficult, if not impossible, to establish as a matter of probabilities that a person's life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person's safety will be

endangered by disclosing a record, the holder of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.  
[Emphasis added]

I adopt this approach for the purposes of this appeal and in doing so give significant weight to the vulnerable nature of the health of some of the residents of the City's supported housing units and the vulnerable position of the staff who work there. Having regard to these circumstances, the nature of the information contained in the records and the confidential representations that have been provided by the City, I find that the City's claim to section 13 is neither frivolous nor exaggerated. I am satisfied in all the circumstances that disclosure of this information might reasonably be expected to seriously threaten the safety or health of the appellant and other individuals.

In arriving at my decision, I have taken into account that despite the voluminous representations I have received from the appellant, he has not provided me with any information or evidence that suggests the representations of the City are either inaccurate, incomplete or misleading. Nor has he provided me with any evidence to suggest more generally that the City's claim to section 13 should not be upheld.

Accordingly, I find that section 38(a) in conjunction with section 13 applies to those records and portions of records that have been withheld by the City pursuant to this claim.

I now turn to consider the City's claim that the remaining portions of the records which have been withheld are exempt pursuant to the personal privacy provisions of the *Act*.

## **PERSONAL PRIVACY**

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

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 or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met.

If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). 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 38(b).



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 paragraph (a), (b) or (c) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. 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 under section 38(b) [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

The City submits that the factors in section 14(2)(f) and (h) weigh against the disclosure of portions of the personal information of the resident’s of the City’s supported housing unit and of staff referred to in the records. Those sections read:

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,

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

The City submits that the information at issue is highly sensitive as it includes information about the interactions of staff with the appellant and their behaviour and it includes confidential comments of the supervisor about the staff member. It also includes information received from other residents, which is highly sensitive and was supplied in confidence. Given that the appellant continues to reside in the City’s assisted housing facilities, the City’s concerns continue to be relevant.

I have reviewed the records at issue in detail and considered the confidential and non-confidential representations of the City. I find that the presumptions in section 14(3) do not apply to any of the personal information remaining at issue. I further find that all of the information at issue that includes the personal information of the residents of the City’s housing facility and the staff employed at the City is exempt as highly sensitive. Disclosure of the information could reasonably be expected to cause significant personal distress to the individuals to whom it relates [Order PO-2518]. I also find that there is sufficient evidence to support a

finding that the information was supplied by the individuals to whom it relates with a reasonable expectation, either implicit or explicit, of confidentiality, and therefore, section 21(2)(h) applies. Therefore, the factors set out in section 21(2)(f) and (h) which weigh against disclosure of the records apply.

I have considered factors that weigh in favour of disclosure and find that they do not apply in the circumstances of this appeal. Accordingly, the balance of factors weigh against disclosing the personal information of the staff and the residents of the City's housing facility. As a result, I find that disclosure would constitute an unjustified invasion of privacy of these individuals. Therefore, the personal information of the residents and the employees is exempt pursuant to section 38(b) of the *Act*.

### **EXERCISE OF DISCRETION**

The sections 38(a) and (b) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so. In addition, the Commissioner 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 either case, 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)].

The City states that it exercised its discretion in good faith and in doing so, took into account the purpose of the exemptions and the appellant's right of access to his own personal information. It also took into account the privacy rights of the other residents and the staff at the supported housing unit and the fact that the appellant has not provided any compelling reason for access to the information at issue. I find that the City has exercised its discretion in an appropriate manner and has taken into account relevant factors in doing so and, for this reason, I uphold the exercise of the City's discretion in the circumstances of this appeal.

**ORDER:**

I uphold the decision of the City.

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

\_\_\_\_\_ March 30, 2009