



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2516

Appeal MA09-94

Toronto Community Housing Corporation



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NATURE OF THE APPEAL:

The Toronto Community Housing Corporation (TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “the pages that were reviewed but not included in my last request of records”. The requester had submitted a request under the *Act*, for the “complete records from start to current”, to TCHC in 2007.

TCHC issued a decision advising that upon review of the records, access was denied to three pages of computer printouts pursuant to sections 7 (advice and recommendations) and 38(b), with reference to section 14(1) (personal privacy), of the *Act*.

The requester, now the appellant, appealed TCHC’s decision.

During mediation, TCHC explained that in 2007, the appellant submitted a request under the *Act* for access to information and access was granted to 133 pages of records. TCHC further explained that three pages of records containing the personal information of another tenant were withheld from disclosure at that time, and again as a result of the current request which is the subject of this appeal. In addition, TCHC decided to withdraw its reliance on section 7 of the *Act*. Accordingly, the application of that exemption is no longer an issue in the appeal. Finally, the appellant informed the mediator that she did not want the tenant whose information is in the responsive records (affected person) to be notified.

As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by sending a Notice of Inquiry to the appellant setting out the facts and issues on appeal. I received representations from the appellant. I then sent a Notice to TCHC, which also provided representations.

RECORDS:

The records remaining at issue consist of three pages of computer printouts, numbered pages 19, 20 and 21.

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 if 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 where 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.)].

TCHC provided the following description of the records which explains the personal information contained therein.

[The records] originate from the Housing Management System (HMS) database used primarily by [TCHC] to track rental payments made by tenants. HMS also has a function titled "Notes" where staff record instances of late rent payment, the issuing of arrears notices, hearing dates, or general notes about tenants.

In this case, another resident in the appellant's building... called the Operating Unit to lodge various complaints about the appellant. A staff member...made a notation of the complaint.

The actual complaint was written up under the complainant's HMS account. As is customary in the case of complaints, staff made a printout of the note, and placed a copy in the appellant's tenant file.

TCHC states that each of the records can be separated into two parts: (a) The portion that contains notes written by the staff member of the allegations made by the complainant tenant; and (b) the HMS screen shot in the background that contains the complainant tenant's account number and account history. Accordingly, TCHC submits that each record contains both the personal information of both the appellant and the complainant tenant and the background screen shot which contains the personal information of the complainant tenant only.

The appellant did not provide representations on this issue.

Based on my review of the records, I find that each record contains:

- The personal information of both the appellant and the complainant tenant in the note part of each of the records within the meaning of paragraphs (a), (b), (c), (d), (g) and (h) of the definition "personal information" in section 2(1) of the *Act*.
- The personal information of the complainant tenant only in the background screen shots within the meaning of paragraphs (b), (c) and (d) of the definition of "personal information" in section 2(1) of the *Act*.

PERSONAL 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 exemptions from this right.

In circumstances where a record contains both the personal information of the appellant and the complainant, the relevant personal privacy exemption is section 38(b). Under section 38(b) of the *Act*, TCHC has the discretion to deny the appellant access to that information if TCHC determines that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. However, TCHC may choose to disclose the record with mixed personal information upon weighing the appellant's right of access to her own personal information against another individual's right to protection of their privacy.

Sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. None of the exceptions appear to apply in the circumstances of this appeal.

Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy of another individual. Where one of the presumptions in section 14(3) applies to the personal information in the record, the only way such presumption against disclosure can be overcome is where the personal information falls under 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]. The appellant has not claimed that section 16 applies in the circumstances of this appeal.

If none of the presumptions against disclosure contained in section 14(3) apply, TCHC must consider the application of factors listed in section 14(2) of the *Act* as well as all other considerations which are relevant in the circumstances of the case [Order P-99].

TCHC submits that the presumptions at sections 14(3)(c) and (f) apply and that disclosure of the personal information in the record is presumed to constitute an unjustified invasion of personal privacy of the complainant. Further, TCHC submits that I should consider the factors weighing against disclosure in sections 14(2)(e) and (h). The appellant submits that I should consider the factors in favour of disclosure in sections 14(2)(d), (g) and (i). Based on my review of the representations, I find that section 14(2)(f) may also apply. Sections 14(2) and (3) state, in part:

(2) 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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

Section 14(3)

Specifically, TCHC submits that the personal information of the complainant on the background screen portion of the records meets the criteria under section 14(3)(c) and (f) of the *Act* and states:

Ms. X is mandated to provide her financial information to TCHC to be eligible for rent-gear-to-Income. TCHC, therefore, submits that the mandatory disclosure of financial information to obtain social housing satisfies the requirement of section 14(3)(c).

...the information on the background of the HMS screen shots meet the criteria under section 14(3)(f) as the information gives certain financial information of [an identifiable individual] that can be used to determine, amongst other things, [the identifiable individual's] income.

The appellant did not make representations on the presumptions in section 14(3).

Based on my review of the records, I find that the presumptions in section 14(3)(c) and (f) apply to the personal information that pertains to the complainant only. As a result, I find that disclosure of this personal information is presumed to constitute an unjustified invasion of personal privacy of the complainant. The information contained in the background screen shots also includes financial information of the complainant, which I find relates to this individual's eligibility for social service (section 14(3)(c)) and describes the individual's finances, liabilities and financial history and activities (section 14(3)(f)).

As I find that the presumption in section 14(3) applies to the personal information of the identified individual in the record, this information qualifies for exemption under section 38(b), subject to my finding on the TCHC's exercise of discretion.

Section 14(2)

The appellant submits that in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy, I should consider the fact that the information given to the TCHC by the complainant regarding the appellant may not be totally factual and in fact may have been "twisted" to damage her reputation. The appellant submits that because the information may not be accurate or reliable it is necessary for her to see the records. The appellant has provided me with information as to the nature of the allegations involved in the records, and submits that the TCHC used the information given by the complainant to involve the Children's Aid Society. Finally, the appellant submits the following about the personal information in the records:

It was a malicious complaint made without reasonable grounds which TCHC did not consult with me about before taking action on it. In all other, even similar complaints TCHC take the position to give each party a chance to respond and in many cases do not collect info and refuse to get involved. The other parties' info could have been better protected at an earlier stage in that they could have told her to seek counseling and asked her to stop harassing me.

TCHC submits that releasing the personal information in the records would unfairly expose the complainant to the type of repercussions suggested in section 14(2)(e). Furthermore, TCHC submits that the complainant provided the personal information in confidence and states:

There are strong reasons why the identity of complainants and the content of any complaints have to be received by [TCHC] in a confidential manner. If the complaints are not confidential, there could be fears of reprisals and thus tenants may not bring forth their complaints.

TCHC emphasized the necessity of its complaint process whereby tenants at Toronto Community Housing are confident that they can bring forth concerns about other tenants without fear of reprisal. Disclosure of the personal information in the record could result in tenants not complaining or making their concerns known to TCHC.

TCHC made further confidential representations which can not be shared due to confidentiality concerns regarding the relationship between the complainant and the appellant.

Based on my review of the records and the representations of the parties, I find that in considering all the relevant circumstances, the factors in favour of privacy protection outweigh the factors favouring disclosure. I agree with the appellant that there are important considerations weighing in favour of disclosure, including the fact that she has not been able to address the complaint made against her which is the subject of the request and the fact that the information in the complaint may be inaccurate or unreliable. I give considerable weight to the fact that the complaint may have played a part in the appellant being investigated by the Children's Aid Society and the fact that the appellant was not able to fully address the complaint.

That being said, I find that I must also consider the fact the complaint was made in confidence. I give significant weight to the arguments made by TCHC that complaints made to TCHC ought to be kept in confidence. However, in my view, the consideration that I must give the greatest weight to is the fact that I have been provided with evidence of a serious and acrimonious relationship between the appellant and the complainant. This is evident in both the personal information in the record as well as the information in the representations. The complaint contains information about the relationship between the complainant and the appellant that could reasonably be expected to cause significant personal distress if the information is disclosed, as contemplated by section 14(2)(f). Further, both the record and TCHC's representations give rise to the possibility of repercussions as described in section 14(2)(e). In my view, the factors favouring disclosure to the appellant are outweighed by the considerations favouring non-disclosure in section 14(2) as well as the likelihood of possible harm to the living arrangements of the parties.

I find that in the circumstances, having balanced the competing interests of the appellant's right to disclosure of the information against the privacy rights of the other individual, disclosure of the portion of the record which contains personal information which is "highly sensitive" and was "supplied in confidence" would constitute an unjustified invasion of the personal privacy of an individual other than the appellant.

Accordingly, subject to the possible application of the absurd result principle and my review of TCHC's exercise of discretion, I find that the discretionary exemption in section 38(b) applies to the personal information of the other individual in the records.

Absurd Result

Whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, M-451, M-613, MO-1323, PO-2498 and PO-2622].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444 and M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414 and MO-2266]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1676, PO-1679, MO-1755 and MO-2257-I]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378, PO-2622, PO-2627 and PO-2642].

The appellant provides a generalized discussion of what she believes is in the personal information at issue in this appeal. Unfortunately, based on this information, I am unable to find that the information at issue is within the appellant's knowledge. The appellant's representations lack the specificity necessary for me to determine that the appellant has knowledge of the information at issue. As such, I find that the absurd result principle does not apply in the circumstances of this appeal.

EXERCISE OF DISCRETION

The section 38(b) exemption is discretionary, and permits 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)].

In exercising its discretion to withhold the information at issue, TCHC submits that it considered the following factors:

- Most of the personal information at issue relates to the identified individual and not the appellant.
- There is no strong public interest argument for releasing the record.
- The relationship between the parties is contentious and disclosure would only add to that tension.
- TCHC tenants need to be assured that complaints to staff will be handled in a confidential manner.

Based on my review of the record, the circumstances of this appeal and the representations of TCHC, I find that TCHC considered only relevant factors including the problems existing in the relationship between the parties and the fact that the majority of the information relates to the complainant rather than the appellant. I find that TCHC properly exercised its discretion in withholding the personal information under section 38(b) and I will not interfere with it on appeal.

ORDER:

I uphold TCHC's decision.

Original Signed By: _____
Stephanie Haly
Adjudicator

_____ April 22, 2010