



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

# **ORDER MO-2594**

## **Appeal MA10-20**

### **Toronto Community Housing Corporation**



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## **NATURE OF THE APPEAL:**

The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Toronto Community Housing Corporation (TCHC) for access to the following information:

Copies of any and all forms, including “Declaration of Abuse” and “Confirmation of Abuse” that relate to or mention [the appellant]. These would form part of an application (with priority) for subsidized housing made by [named individual] through Housing Connection [during a specified time period].

The TCHC denied access to the information requested pursuant to the discretionary personal privacy exemption in section 38(b), with reference to section 14(1) of the *Act*.

During mediation, the mediator contacted the individual named in the request (the affected person) in order to determine whether she would consent to the release of the records at issue. The affected person did not provide her consent.

Mediation did not resolve the appeal and the file was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. During the inquiry into the appeal, I sought and received representations from TCHC, the affected person and the appellant. Representations were shared in accordance with section 7 of the IPC’s *Code of Procedure and Practice Direction 7*. The affected person reiterated that she does not consent to the disclosure of her personal information.

## **RECORDS:**

The records at issue total 8 pages and is comprised of an application, two letters and a form. TCHC located an additional record, a “Declaration”, while preparing its representations. TCHC describes the records as follows:

- One page form submitted to TCHC by the affected person relating to “Special Priority Transfer Application” (the “Declaration”).
- A three-page letter addressed to TCHC which describes a request for assistance (the “Letter”).
- A three-page letter addressed to TCHC describing a request for assistance and including an update of information referred to in the “Letter” (the “Revised Letter”)
- One page form submitted to TCHC by the affected person which relates to a “Special Priority Internal Transfer Application” (the “Confirmation”)

## **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 submits that the records contain recorded information about the affected person and the appellant within the meaning of the definition of “personal information” set out in section 2(1) of the *Act*. TCHC submits that the records contain the following:

- correspondence sent to it by the affected person that is explicitly of a private and confidential nature, in support of her “Declaration” (paragraph (f) of the definition of “personal information”).
- the address of the affected person and the appellant (paragraph (d) of the definition of “personal information”)
- the views of a social worker about the affected person including the characterization of the affected person’s experiences, the effects of those experiences on the affected person, and the needs of the affected person (paragraph (g) of the definition of “personal information”)
- the indirect opinion and views of a social worker about the appellant (paragraph (g) of the definition of “personal information”)
- the appellant’s name along with other personal information relating to the appellant (paragraph (h) of the definition of “personal information”)

The appellant submits that he already knows the address of the affected person and it can therefore be severed from the records. Further, he submits that the forms which were filled out by the affected person contain the warning that personal information collected in the form is subject to the *Act*. Therefore, the affected person could not expect total privacy or confidentiality in the information provided to TCHC. Finally, the appellant submits that he is only interested in his alleged incidents of abuse referred to in the records. In support of his representations, the appellant provided me with a copy of the blank “Confirmation of Abuse” and “Declaration of Abuse” forms.

Based on my review of the records, I find that the “Confirmation of Abuse” record does not contain any recorded information about the appellant and relates solely to the affected person. For the purposes of the appeal, I find this record contains the affected person’s personal information only. The Declaration, Letter and Revised letter contain recorded information about the affected person and the appellant, and as such, qualifies as their personal information. Further, as the appellant states that he is not interested in the affected person’s address, I have removed this information from the scope of the appeal and it will not be dealt with further in this order. I note that on the Declaration, the appellant’s address is listed because the affected person was living with him at the time. I have also removed this information from the scope of the appeal.

Previous orders have established that where a record contains both the personal information of the requester and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b) [Order M-352]. Some exemptions, including the invasion of privacy exemption at section 14(1), are mandatory under Part I but discretionary under Part II, and thus in the latter case an institution may disclose information that it could not disclose if Part I is applied [Order MO-1757-I].

Furthermore, the correct approach is to review the entire record, not only the portions remaining at issue, to determine, whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part I or Part II of the *Act* [Order M-352].

Applying this record-by-record approach, I find that the Declaration, Letter and Revised Letter contain the personal information of the appellant and the affected person. Accordingly, I will consider whether these records qualify for the personal privacy exemption under the discretionary exemption at section 38(b), found in Part II of the *Act*. As I have found that the Confirmation only contains the personal information of the affected person, I will consider whether it qualifies for disclosure under section 14(1), found in Part I 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.

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. See below for a more detailed discussion of the exercise of discretion issue.

Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy".

In both these situations, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

As stated above, I contacted the affected person to find out whether she would provide her consent under section 14(1)(a) to the disclosure of her personal information. The affected person did not provide her consent and thus I find that section 14(1)(a) does not apply in the circumstances.

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 sections 14 or 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]. In the circumstances of this appeal, I find that section 14(4) does not apply and I will address the appellant’s public interest argument in my discussion below.

TCHC submits that the presumption against disclosure in section 14(3)(c) applies. This section states:

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;

TCHC submits that it is the largest social housing landlord in Canada and it is governed and is subject to the *Social Housing Reform Act* (the *SHRA*), which has the stated purpose of providing for the efficient and effective administration of housing programs by service managers. Further, it states that it administers social housing and rent-geared-to-income (“RGI”) subsidies for the City of Toronto. Regarding the presumption, TCHC states:

...[it] offers certain tenants the ability to transfer units. TCHC provides the opportunity for transfers and priority transfers to its tenants as a social service. To be eligible for this Special Priority transfer social service, a tenant must complete TCHC’s “Special Priority Internal Transfer Application” accompanied by [named] form[s]...The Declaration and Confirmation forms each indicated that the forms will be used to “determine current/or inclusion in the Special Priority Household category”. Without completion of these documents, the tenant is not eligible for TCHC’s transfer services as a Special Priority transfer.

In this case, the Letters constitute the detailed account of the [affected person’s] situation..., accompanying the Confirmation form. All of the Records were necessary to determine the individual’s eligibility for a Special Priority request for transfer. As such, the Records are exempt from disclosure because they relate to eligibility for a social service under paragraph 14(3)(c) of *MFIPPA*.

The appellant submits that the application for housing is not a social service for the purposes of the *Act*. Additionally, the appellant states that he is not interested in information about the outcome of the affected person’s form filing or his own eligibility for social services.

Based on my review of the records and the parties representations, I find that the presumption in section 14(3)(c) applies to the disclosure of the records. I find that disclosure of the personal information in all the records is presumed to constitute an unjustified invasion of the affected person's personal privacy as the information relates to the affected person's eligibility for social service, namely rent-geared-to-income housing, provided by a City of Toronto agency. Past orders of this office have identified social assistance through rent-geared-to-income housing as a social service within the meaning of the presumption in 14(3)(c) of the *Act* (Order MO-2047-I and Order MO-1854-F). The records contain the forms and supporting documents necessary for the affected person's eligibility for the Special Priority Transfer, a social assistance program. I find that disclosure of the personal information in the records is presumed to constitute an unjustified invasion of the affected person's personal privacy under section 14(3)(c). As a result, I find the Confirmation record exempt under section 14(1) and the Declaration, Letter and Revised Letter exempt under section 38(b) of the *Act*, subject to my finding on absurd result, the exercise of discretion and the public interest argument set out below.

### **Absurd Result**

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].

TCHC acknowledges that some of the events described in the Letter and Revised letter may be familiar to the appellant. The appellant submits that it would be absurd to deny him the information described in the records, but does not address what the actual information may be. Further, based on the nature and subject matter of the Letter and Revised Letter, I find that the events described therein were related to the social workers by the affected person. I find that the affected person's personal views and opinions of the events and incidents described would not necessarily be within the appellant's knowledge, based on my understanding of their contents.

Accordingly, I find that the absurd result principle does not apply in the circumstances.

## 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 support of its exercise of discretion, TCHC submits that it balanced the privacy rights of the affected person and the access rights of the appellant. In doing so, it identified the nature of the information in the records, applied the relevant legal provisions and considered the relevant factors in the circumstances, including the context in which the information was provided. Specifically, TCHC submits that it considered:

- the [appellant] has a right of access to his own information, but in this specific case, the [appellant's] request was denied because the Records containing the information also include the personal information of the [affected person] which:
  - was provided for the purposes of determining eligibility, the release of which unjustifiably invades the personal privacy of the [affected person];
  - was sensitive in nature and was provided in confidence to TCHC; and
  - if disclosed, would erode trust in TCHC as a landlord and public housing provider thereby resulting in severe harm to the credibility of TCHC among its tenants, and leading to unnecessary continuance of abuse among some of its tenants;
- the decision to deny the disclosure because it was an invasion of the [affected person's] personal privacy:
  - was not absurd;
  - respected the purpose of the [Act] and the provisions thereunder;
  - applied the language and wording of the MFIPPA exemptions;



- regarded the interests of the public in accessing information; and
- considered the operation of the TCHC as a responsible and trusted provider of safe, affordable public housing;

The appellant submits that the TCHC did not exercise its discretion in good faith and took into account irrelevant considerations. Specifically, the appellant states that TCHC did not balance his access rights with the affected person's privacy rights and instead acted with bias in refusing to disclose the records. The appellant did not provide evidence of his allegation that TCHC acted with bias.

Based on the parties' representations, I find that TCHC properly exercised its discretion under section 38(b) to withhold the personal information in the records. TCHC properly considered that individuals should have a right of access to their own information; that the privacy rights of individuals should be protected; the wording of the exemptions and the interests it seeks to protect, as well as the relationship between the requester and the affected person. TCHC also considered whether disclosure of the record would increase public confidence in the operation of the institution. I do not find the appellant's allegation of bias to be substantiated and confirm that TCHC properly exercised its discretion to withhold the records under section 38(b) of the *Act*.

### **PUBLIC INTEREST OVERRIDE**

The appellant submits that the public interest override in section 16 applies to the records in this appeal. Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption. [Order P-244]

### **Compelling public interest**

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government [Orders P-984, PO-2607]. Previous orders have

stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Orders P-984 and PO-2556].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347 and P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered “compelling” and the override will not apply [Orders PO-2072-F and PO-2098-R].

The appellant states that there is a compelling public interest in the disclosure of the information in the records because:

A system of allowing people to jump a very long waiting list for housing with no effective control over whether the information supplied is true and damages the reputations of innocent people is not in the public interest. Those people unfairly displaced from the housing queue have a valid interest in ensuring the Special Priority Household categorization is not misused, as I believed has happened in this instance.

Based on the record at issue and the appellant’s representations, I find that he has not established a compelling public interest in the disclosure of the record. While I accept that there is a public interest in ensuring that public funds and social assistance only go to those individuals who qualify, I find that the appellant’s interest in the disclosure of the records is essentially a personal one. The majority of the appellant’s representations focus on his right to know the allegations made against him in the records.

The records at issue contain the affected person’s request for a Special Priority housing transfer. Even if I accepted that there was a compelling public interest in monitoring this social assistance program, I would not find that disclosure of the personal information in these particular records would serve the purpose of informing the public of the activities of TCHC or the government.

Accordingly, I find that section 16 does not apply in this appeal.

**ORDER:**

I uphold TCHC's decision to withhold the records from disclosure and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

February 3, 2011 \_\_\_\_\_