

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2677

Appeal MA10-71

City of Toronto

December 14, 2011

Summary:

The appellant slipped and fell in a parking lot in a mall located in the City of Toronto (the city) and sustained injuries. An individual witnessed the incident, called 911 and subsequently reported it to the city's Emergency Medical Services Division (EMS). The appellant sought access to a transcript of the 911 call. The city granted partial access to a CD audio recording of the 911 call to EMS with the first name and telephone number of the witness severed, pursuant to section 14(1) (personal privacy). During the mediation stage of the appeal, the application of section 38(b), read in conjunction with section 14, was added as an issue. During the course of the inquiry, the appellant raised the application of section 16 (public interest override). The appellant's appeal was dismissed. The record contains the personal information of an identifiable individual other than the appellant. The withheld information qualifies for exemption under section 38(b). In reaching this decision, the factors in sections 14(2)(d) (fair determination of rights), 14(2)(f) (highly sensitive) and 14(2)(h) (supplied in confidence) were considered and weighed. Section 16 was found not to apply in this case.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"), 14(1)(a), (b) and (d), 14(2)(d), (f) and (h), 16, 38(b).

Orders and Investigation Reports Considered: PO-2541, PO-1670, PO-2518, P-1398, MO-2395, PO-2681.

OVERVIEW:

[1] On December 26, 2008 the appellant slipped and fell in a parking lot at an identified address and allegedly sustained catastrophic injuries. She commenced a civil action for damages for the injuries she suffered as a result of the incident.

[2] At the time of the incident, a witness placed a 911 call for assistance, which was subsequently transferred to the City of Toronto's (the city) Emergency Medical Services (EMS) Division. The appellant submitted a request to the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the transcript of the 911 call.

[3] During the processing of the request, the city clarified with the appellant that the EMS Division does not provide transcription services for 911 calls. The city confirmed with the requester that she wished to pursue access to the audio recording of the 911 call only.

[4] The city issued a decision letter in which it stated that it had located one audio recording with a tape analysis log relating to the incident. The city granted access to the contents of the audio tape with the exception of the first name and telephone number of the witness to the incident who had called 911. The city denied access to the witness's first name and telephone number pursuant to section 14(1) (personal privacy) of the *Act*.

[5] The appellant appealed the city's decision.

[6] During the mediation stage of the appeal, the appellant confirmed that she was pursuing access to the withheld information contained in the record at issue. The mediator notified the witness for the purpose of obtaining consent regarding the disclosure of the withheld information to the appellant. The witness declined to provide consent.

[7] Also during mediation, both parties agreed that section 38(b) of the *Act* may apply in the circumstances of this case. Accordingly, the application of section 38(b) was added as an issue.

[8] The parties were unable to resolve the appeal during mediation and the file was transferred to the adjudication stage for an inquiry, in which the parties are invited to provide written representations on the issues. I was assigned to conduct the inquiry.

[9] During the course of my inquiry, I sought and received representations from the city and the appellant. As a result of what I received, I decided to not seek representations from the witness. In her representations, the appellant indicates that

there is a compelling public interest in the disclosure of the withheld information, raising for the first time the application of the public interest override (section 16).

[10] In the discussion that follows, I reach the following conclusions:

- the record contains the personal information of the appellant and another identifiable individual;
- the withheld portions of the record qualify for exemption under section 38(b); and
- the section 16 public interest override does not apply to overcome the application of section 38(b).

RECORD:

[11] There is one record at issue, a CD audio recording of a 911 call to EMS with the first name and telephone number of an individual severed.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. If the exemption at section 38(b) is found to apply, does section 16 override the application of the exemption?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[12] 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,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(g) the views or opinions of another individual about another individual,

(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;

[13] The city describes the information at issue as the "first name of an individual and his cell phone number." The city states that while a person's first name would not on its own normally constitute personal information, it submits that the first name together with the telephone number constitutes personal information that meets the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1). The city acknowledges that the record also contains the personal information of the appellant, including the witness' description of the appellant's fall and the sound of the appellant's voice in the background of the recording. The city, therefore, argues that the record contains both the personal information of the witness and the appellant.

[14] The appellant acknowledges that the record at issue contains the personal information of both the witness and herself.

[15] On my review of the record, I find that it contains the personal information of the appellant, as it contains the views or opinions of the witness about the appellant regarding the events surrounding the appellant's slip and fall accident [paragraph (g)].

[16] I also find that the withheld portions of the record contain the personal information of another identifiable individual. I concur with the city that the witness' first name alone would not normally identify that person and qualify as personal information; however, when combined with his telephone number this information constitutes the witness' personal information that meets the requirements of paragraphs (d) and (h) of the definition of "personal information" in section 2(1).

B. Does the discretionary exemption at section 38(b) apply to the information at issue?

[17] 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. In this case, the police must look at the information and weigh the appellant's right of access to his own personal information against the affected person's right to the protection of their privacy. If the police determine that release of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 38(b) gives the police the discretion to deny access to the appellant's personal information.

[18] In determining whether the exemption in section 38(b) applies, sections 14(1), (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 for the police 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. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b).

Section 14(1)(a)

[19] Section 14(1)(a) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

[20] As stated above, during the course of mediation the mediator contacted the witness in an attempt to obtain his consent to the release of his personal information. Consent was not provided.

[21] As a result, I find that section 14(1)(a) does not apply to the information remaining at issue, as the affected party whose information is at issue did not consent to the disclosure of the information relating to him.

Section 38(b)

[22] Section 38(b) states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy

[23] The city submits that section 38(b) applies to the information remaining at issue. In support of its position, it considered the factors in sections 14(2)(d) (fair determination of rights), 14(2)(f) (highly sensitive) and 14(2)(h) (supplied in confidence) in denying access to the withheld information.

[24] Sections 14(2)(d), (f) and (h) 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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

...

(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

[25] The city cites section 14(2)(h) as the main factor behind its decision to deny access to the witness' personal information. The city submits that the witness called 911 after seeing the appellant slip on some ice in the parking lot of a mall. The city states that the call was received by the Toronto Police Services Dispatch Centre and subsequently transferred to the city's EMS Division. The city submits that the witness supplied his personal information in response to questions put to him by EMS "with the intent of facilitating the provision of emergency medical services." The city states that EMS requires "call back information" (the witness' name and telephone number) to maintain contact with the witness in the event the call is disconnected prior to the arrival of EMS personnel or, if necessary, to confirm the location of the incident. The city submits that the witness' personal information was, therefore, collected and used by EMS only for the duration of the emergency call and to facilitate the provision of emergency medical services.

[26] The city further submits that the witness was acting as a "Good Samaritan" when he called 911 and "would not have had any expectation" that having done this good deed, his personal information would subsequently be the subject of a freedom of information request and possibly disclosed in response to such request. The city adds that it is clear that the witness does not want to be contacted by the appellant, as confirmed by his refusal to consent to the disclosure of his personal information to the appellant. The city concludes that "the witness intended that his personal information be kept confidential by EMS and therefore, it was supplied to [the] city in confidence." Under these circumstances, the city takes the position that it properly applied the factor in section 14(2)(h).

[27] Given the city's position on the application of the factor in section 14(2)(h), it argues that it would be reasonable to expect that the release of the witness' personal information, against his expressed wishes, would cause him "excessive distress." The city, therefore, submits that section 14(2)(f) is also a relevant factor favouring non-disclosure of the witness' personal information in this case.

[28] The city states that it also considered the factor in section 14(2)(d), the extent to which the information at issue is relevant to a fair determination of rights affecting the appellant. The city acknowledges that while the appellant may be interested in the information at issue to pursue legal action as a result of the incident, it notes that denying access to it through this process does not prevent the appellant from obtaining it through other means. Accordingly, the city argues that denying access through this process would not affect a fair determination of the appellant's rights.

[29] Finally, the city states that it considered the impact that disclosure could have on the willingness of members of the public to assist EMS in the future. The city notes that it relies on members of the public to contact 911 in the event of an emergency. The city believes it is important that members of the public are able to do so without fear that any personal information they provide during the course of assisting will be disclosed to others. The city worries that if it cannot provide an assurance of confidentiality members of the public will not be inclined to assist in the future.

[30] In response, the appellant states that the individual whose personal information is contained in the record is a key witness in a civil action for damages due to the catastrophic injuries she suffered as a result of the incident. In support of her request for the information at issue, the appellant relies on the wording of the exception in section 14(1)(b) and the factor in section 14(2)(d).

[31] Sections 14(1)(b) and (d) state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

...

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

[32] The appellant states that as the witness was the only person who witnessed the slip and fall accident, he is the only person who can provide a statement and testify as to the circumstances surrounding the appellant's fall. The appellant argues that without this information she will not have an opportunity for a fair trial.

[33] With regard to section 14(1)(d), the appellant references Rule 30.10 of the Ontario *Rules of Civil Procedure*, which states, in part:

The court may, on a motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged . . ."

[34] The appellant states that she does not believe that the witness will experience "excessive stress" as a result of providing a witness statement or be exposed to pecuniary or other harm within the meaning of the factor in section 14(2)(e).

[35] The appellant submits that while the city states that the witness intended that his personal information be kept confidential by EMS, there was no assurance that confidentiality would be given.

Findings

[36] I have carefully reviewed the parties' representations and conclude that none of the exceptions in section 14(1) apply to remove the information at issue from the scope of the section 38(b) exemption.

[37] It is clear that the witness did not consent to the disclosure of his personal information; accordingly, the exception in section 14(1)(a) does not apply.

[38] I acknowledge the appellant's raising of the exceptions in sections 14(1)(b) and (d); however, in my view, these exceptions do not apply in this case.

[39] As a matter of substance, section 14(1)(b) applies “in compelling circumstances affecting the health or safety of an individual . . .” In my view, in order to meet the “compelling” threshold, the purpose for seeking the personal information in question must be a matter of immediate and essential health or safety affecting the requester.¹ While the information in question in this case, may be of great importance to the appellant in pursuing her civil suit for damages, I am not satisfied that the circumstances here meet the standard of compelling.

[40] With regard to the exception in section 14(1)(d), this section applies in circumstances where an Act of Ontario or Canada “expressly” authorizes disclosure. The appellant makes reference to the powers of the court under Rule 30.10 of the *Rules of Civil Procedure* to order production of a document. However, on my reading of Rule 30.10 the court’s powers to order production are discretionary, as evidenced by the use of the words “may, on a motion by a party”. Accordingly, I am not satisfied that the exception in section 14(1)(d) has any application in the circumstances of this case.

[41] I now turn to an analysis of the factors in sections 14(2)(d), (f) and (h).

[42] For the factor in section 14(2)(h) to apply, and the information at issue to be found to have been delivered in confidence, both the individual supplying the information and the recipient of it must have a reasonable expectation that the information would be treated confidentially. Therefore, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.²

[43] On my review of the evidence provided, I am satisfied that the witness made a 911 call to the Toronto Police Services Dispatch Centre with the intention of assisting the appellant after witnessing her slip and fall accident and that this call was transferred to EMS dispatch. I am also satisfied that during the course of the witness’ call with EMS he was asked to provide his first name and contact number, which he did. I concur with the city that in these circumstances this information was given with the shared understanding that it was being provided to EMS solely to maintain contact with the caller in the event the call was disconnected prior to the arrival of EMS personnel or, if necessary, to confirm the location of the incident. I am satisfied, based on this understanding, that the city and the witness had a reasonable expectation that this information was given in confidence and would not be shared other than to facilitate a call back if the witness’ call was disconnected or to confirm the incident location. Accordingly, I am satisfied that the witness gave his first name and telephone number

¹ See Order PO-2541 where the adjudicator found that records held by Archives of Ontario regarding the requester’s father could provide essential medical information regarding a loss of function in his own daughter’s arm that the medical profession had been unable to isolate.

² Order PO-1670.

to EMS in confidence within the meaning of the factor in section 14(2)(h). I accord this factor significant weight in favour of privacy protection.

[44] With regard to the factor in section 14(2)(f), in order for the information at issue to be found to be "highly sensitive", the disclosure of the personal information must reasonably be expected to cause significant personal distress to the subject individual.³ In light of the circumstances in which the witness provided his name and telephone number to the EMS, I am satisfied that disclosure of his personal information would reasonably be expected to cause significant personal distress to him. Accordingly, I conclude that the factor at section 14(2)(f) weighing in favour of privacy, as it relates to this personal information, also carries significant weight.

[45] Finally, the appellant relies on the factor in section 14(2)(d), arguing that the information at issue is needed for a fair determination of her rights in a lawsuit she commenced due to the injuries suffered as a result of this incident.

[46] For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.⁴

[47] On the evidence presented I am prepared to accept that the appellant seeks the information in question to pursue a legal right related to a civil proceeding commenced to obtain damages as a result of injuries suffered due to her slip and fall incident. I also accept that this information may be of some significant value to the appellant in the determination of her rights and that this information is required in order to prepare for trial. However, I am also aware that this information is available through other means. Accordingly, while I find that section 14(2)(d) is a relevant consideration

³ Order PO-2518.

⁴ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

favouring the disclosure of the personal information at issue, I only attach moderate weight to it.

[48] In addition, I note that the city has also raised as a factor weighing in favour of privacy protection the impact that disclosure in this case could have on the willingness of members of the public to call 911 in the future in the event of an emergency. I concur with the city that if it cannot provide an assurance of confidentiality to members of the public when they step forward to assist as Good Samaritans, members of the public will be less inclined to do so in the future. I agree that since the 911 service relies on the general public to assist in times of emergency disclosure in this case could have a significant chilling effect on the willingness of the public to step forward in the future. Accordingly, I also give significant weight to this factor in favour of privacy protection.

[49] Balancing all of the factors presented, I conclude that the factors favouring privacy protection [sections 14(2)(f) and (h) and the risk that members of the public will be reluctant to step forward as Good Samaritans in the future if this type of information is disclosed] far outweigh the one factor weighing in favour of disclosure [section 14(2)(d)].

[50] I am, therefore, satisfied that disclosure of the witness' personal information would constitute an unjustified invasion of his personal privacy and I find this personal information qualifies for exemption under section 38(b) of the *Act*.

[51] The section 14(4) exception has not been raised and, in my view, has no relevance to this case. I examine the application of the public interest override, in section 16, below.

Exercise of discretion

[52] The section 38(b) exemption is discretionary and permits the city to disclose information, despite the fact that it could be withheld. On appeal, this office may review the city's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.⁵

[53] In their representations, the city acknowledge that section 38(b) introduces a balancing principle, and that in denying access to the withheld information it considered the following factors:

- the purposes of the *Act*, including the principles that government information should be made available to the public and individuals should

⁵ Orders PO-2129-F and MO-1629

have the right of access to their own personal information balanced against the privacy rights of other individuals

- the wording of the exemptions and the interests they seek to protect
- whether there are compelling or sympathetic reasons for providing access to the withheld information to the appellant
- historical practice

[54] The city states that it provided the appellant with as much information as possible, including all information about the appellant, without compromising the personal privacy of the witness. The city submits that it properly applied the section 38(b) exemption by carefully considering the factors in sections 14(2)(d), (f) and (h). The city states that the appellant has not provided it with a compelling or sympathetic reason why disclosure of the witness' personal information should be made in this case. And, finally, in deciding not to provide the withheld information to the appellant, the city submits that it is following the historical practice of protecting the contact information of witnesses to ensure that members of the public feel free to contact EMS without fear that their personal information will later be released to third parties.

[55] The appellant did not make representations on the city's exercise of discretion.

[56] I have reviewed the circumstances surrounding this appeal and the city's representations on the manner in which it exercised its discretion. Based on this information, as well as on the fact that all of the information in the record was disclosed to the appellant with the exception of the witness' first name and telephone number, I am satisfied that the city did not err in the exercise of its discretion not to disclose to the appellant the remaining information contained in the record.

[57] Accordingly, I confirm that the withheld portions of the record qualify for exemption under section 38(b).

C. If the exemption at section 38(b) is found to apply, does section 16 override the application of the exemption?

[58] I will now examine the application of section 16 to the information I have found exempt under section 38(b), read with section 14.

[59] Section 16 states:

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

[60] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the exemption.⁶ In Order P-1398, Senior Adjudicator John Higgins made the following statements regarding the application of section 23 of *FIPPA*, which is equivalent to section 16 of the *Act*:

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions that have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information that has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

[61] In considering whether there is a "public interest" in the disclosure of a 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.⁷ 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 the citizenry about the activities of their government, 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.⁸

[62] A public interest does not exist where the interests being advanced are essentially private in nature.⁹ Where a private interest in disclosure raises issues of a more general application, a public interest may be found to exist.¹⁰

⁶ See Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.).

⁷ Order P-984.

⁸ Order P-984.

⁹ Orders P-12, P-347, P-1439.

¹⁰ Order MO-1564.

[63] Any public interest in *non*-disclosure that may exist also must be considered.¹¹

[64] The appellant “acknowledges” that disclosing the witness’ personal information “may be an invasion of personal privacy.” However, the appellant submits that in this case there is a “compelling public interest in disclosure which strongly outweighs the right of the witness to privacy protection.” The appellant lists seven orders issued by the Commissioner¹² in support of her position, stating that these orders “share similar fact situations with this matter.” The appellant does not provide any analysis regarding the relevance of these orders to the circumstances of this case.

[65] Having carefully considered the appellant’s representations, I am not convinced that there is a compelling public interest in the disclosure of the information at issue. In my view, the appellant’s motives for obtaining this information appear to be essentially private in nature. She has indicated that she is interested in obtaining the name and contact information of the witness to assist her at her civil trial. The appellant has made it very clear that this individual is a key witness, perhaps the only witness to the slip and fall accident, and she is counting on his evidence at trial. While the appellant’s objectives in pursuing access to the witness’ personal information may be genuine and sincere, I do not see how the disclosure of this information would serve any compelling public interest. I am not satisfied that the interest that exists in the information requested would serve the purpose of informing the citizenry about the activities of their government, as opposed to a private interest of the appellant.

[66] In reaching my conclusion, I have reviewed all of the orders raised by the appellant very carefully. Of the seven orders brought to my attention, five do not consider the application of the public interest override at all.¹³ And, of the two orders that address and apply the public interest override,¹⁴ the circumstances in those cases were rather different from those in this case.

[67] In Order MO-2395, the public interest override was applied to override the application of the section 38(b) exemption to portions of a police investigation report that explores the circumstances surrounding the injuries suffered by a woman who was a resident in a nursing home. The investigation report sets out the information gathered by the police for the purpose of determining whether the woman’s injuries were caused by a criminal act. The requesters in that case were the husband and daughter of the nursing home resident. In that case, Adjudicator Colin Bhattacharjee found that there was a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government. In making that finding he stated:

¹¹ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

¹² Orders M-1146, PO-2086-R, M-63, 2536-I, MO-1480, MO-2395 and PO-2681.

¹³ Orders M-1146, PO-2086-R, M-63, 2536-I and MO-1480.

¹⁴ Orders MO-2395 and PO-2681.

Although nursing homes are not subject to the *Act*, the well-being of the seniors who reside at these homes is overseen by both the provincial government, which regulates nursing homes, and the Police, who are called in to investigate if there are grounds for believing that a criminal act may have taken place.

In my view, disclosing the withheld portions of the record at issue would shed light on the Police's investigation into the circumstances that may have led to the woman's injuries. In addition, it would have the ancillary effect of allowing the public to scrutinize whether the provincial government is fulfilling its regulatory responsibility towards this particular nursing home.

[68] While acknowledging that the requesters may have also had a private interest in the information at issue in that case, Adjudicator Bhattacharjee notes that the injured woman's daughter and husband had provided him with newspaper clippings that show that her unexplained injuries received prominent and extensive coverage in local media, demonstrating that there was also a broader public interest in disclosing the withheld information in the record at issue. In concluding that the public interest applied in that case, Adjudicator Bhattacharjee stated that the requesters in that case had raised issues that have general application to other families throughout Ontario who have elderly relatives in nursing homes.

[69] In Order PO-2681, the records at issue related to a heritage property located in downtown Hamilton. In that case, Senior Adjudicator John Higgins considered the application of the provincial *Act* exemption in section 13(1) (advice or recommendations) to the records at issue and found that it did not apply. Nevertheless, he went on to examine the application of section 23 (the provincial *Act* equivalent of section 16) in the event that section 13 had been found to apply. He concluded there was a compelling public interest in the disclosure of the records at issue that would clearly outweigh the purpose of the section 13(1) exemption, citing the importance of heritage buildings as "unquestionably a matter of public interest."

[70] In my view, the circumstances in the case before me are very different from those in Orders MO-2395 and PO-2681. In each of Orders MO-2395 and PO-2681 there was a clear public interest in the disclosure of the information at issue. In Order MO-2395, although the requesters may have had a private interest in the records at issue, the issues at the nursing home were also of broader public interest and general application to other Ontario families with elderly relatives in nursing homes. In PO-2681, the protection of heritage properties is clearly a matter of public interest. Conversely, in the case before me, I find that the appellant's interests are exclusively private in nature, relating to the circumstances surrounding her slip and fall accident in a parking lot at an identified address in a mall. I have not been provided with any evidence as to why this incident at this location would achieve the *Act's* central purpose

of shedding light on the operations of government. In addition, I have not been provided with evidence that would suggest that disclosure of the withheld information would raise issues of a more general application to other members of the public.

[71] Finally, even if I were to find that a public interest does exist in the circumstances of this case, I find that any public interest in the information requested does not clearly outweigh the purpose of the section 38(b) exemption. In my view, the appellant has not demonstrated that any public interest in making this information publicly available clearly outweighs the need to protect the personal privacy rights of the witness.

[72] Accordingly, I find that the section 16 public interest override does not apply in the circumstances of this case.

ORDER:

I uphold the city's decision to deny access to the withheld portions of the record at issue, pursuant to section 38(b), and I dismiss the appeal.

Original Signed by: _____

Bernard Morrow

Adjudicator

December 14, 2011 _____