

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2960

Appeal MA13-142

City of Brampton

October 4, 2013

**Summary:** The requester sought the identity of an individual who complained about un-cleared snow on a sidewalk, leading to an order under a by-law of the City of Brampton. The city provided all of the responsive records, severing only the name, address and phone number of the complainant under section 38(b) (discretion to refuse requester's own information). This order upholds the city's decision to deny access to the complainant's name.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 14(2)(e) and (h), 14(3)(b), 38(b).

### OVERVIEW:

[1] The City of Brampton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the name of the complainant who reported un-cleared snow on the sidewalk in front of the requester's residence on a given date.

[2] The city located a number of responsive records and issued a decision granting partial access to the records. The city denied access to the name, telephone number and address of the individual who had filed the complaint, relying on section 14(2)(h) (information supplied in confidence) of the *Act*. In addition, the city redacted information it deemed to be unresponsive to the request.

[3] The requester (now the appellant) appealed the city's decision.

[4] During mediation, the city clarified that its decision to deny access to this information is based on the discretionary personal privacy exemption in section 38(b), in conjunction with the factor in section 14(2)(h) (supplied in confidence) and the presumption in section 14(3)(b) (law enforcement) of the *Act*. The city explained that the complaint that is the subject of this appeal was made pursuant to the city's by-law regarding snow and ice removal.

[5] Also, the appellant indicated that the only information to which he now seeks access is the complainant's name.

[6] During the inquiry process, I sought and received representations from the city. I also decided to notify the complainant as an affected party, who provided representations objecting to the release of his/her information. The appellant did not provide representations, although he made some comments in his appeal letter and correspondence to the mediator which I have reviewed.

[7] In this order, I uphold the city's decision to deny access to the affected party's name.

## **RECORDS:**

[8] The record remaining at issue is a Municipal Complaint Information form, from which a portion containing the affected party's name, address and phone number has been severed. The only information at issue is the name.

## **ISSUES:**

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

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

Issue C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

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

[9] Section 2(1) of the *Act* reads, in part:

"personal information" means recorded information about an identifiable individual, including,

(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 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;

[10] The city submits that the record at issue (i.e. the Municipal Complaint Information form) contains the personal information of both the appellant and the affected party within the meaning of section 2(1) of the *Act*. Specifically, the city submits that the record contains information which falls within the ambit of paragraphs(a), (b), (d), (e), (f) and (h) of the definition of personal information in section 2(1).

[11] I am satisfied that the record contains the personal information of the appellant. Although he is not named, the other information in the record serves to identify him and contains information about his gender, address, medical condition and personal opinions, within the meaning of paragraphs (a), (b), (d), and (e) of section 2(1). In addition, the severed portions of the record contain personal information of the affected party, being his/her name, telephone number and address, within the meaning of paragraphs (d) and (h).

[12] Having found that the record contains the personal information of the appellant as well as the affected party, I will review whether the withheld portion of the records qualifies for exemption under the discretionary exemption in section 38(b).

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

[13] 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. One such exemption is section 38(b), where disclosure of a record containing personal information of both the requester and another individual would constitute an "unjustified invasion" of the other individual's personal privacy. In such a case, the institution may refuse to disclose that information to the requester.

[14] Under section 38(b), sections 14(1) to (4) provide guidance in determining whether the threshold for an unjustified invasion of personal privacy 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 under section 38(b).

[15] Section 14(2) provides a list of factors for the city to consider in making this determination, while section 14(3) lists types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 14(2) and (3) may all be considered in determining whether disclosure would be an unjustified invasion of personal privacy.<sup>1</sup>

[16] In addition, section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[17] In the circumstances of this appeal, sections 14(1)(a) to (e) and 14(4) do not apply and it is unnecessary for me to discuss them.

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<sup>1</sup> *Grant v. Cropley* [2001] O.J. 749.

***The presumption in section 14(3)(b)***

[18] In this appeal, the city relies on the “presumed unjustified invasion of personal privacy” in section 14(3)(b) of the *Act*, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[19] The city asserts that the personal information in question, the name of the complainant, was compiled as part of an investigation into a violation of a city by-law. After an investigation, it was found that the appellant was in violation of the snow removal by-law and an order to comply was issued.

[20] Previous orders from this office have determined that an investigation into a violation of a municipal by-law is an “investigation into a possible violation of law” for the purpose of section 14(3)(b).<sup>2</sup> I agree with that analysis and, applying it to the circumstances in this case, find that the personal information was compiled and identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the personal information in the record, including the name of the affected party, falls within the ambit of the presumption in section 14(3)(b).

***The factors in section 14(2)***

[21] The city refers to the factors in 14(2)(e) and (h) in support of its position that disclosure of the affected party’s name would result in an unjustified invasion of the affected party’s personal privacy.

[22] Section 14(2)(e) weighs against disclosure where the individual to whom the information relates will be exposed unfairly to pecuniary or other harm. The city states that fear of reprisal is always a consideration when a potential informer weighs his or her duty to report violations of law. A safe community, it submits, requires the collaboration of its citizens. The city states that it is the duty of law enforcement to always assume the possibility of reprisal when considering disclosing the identity of a complainant.

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<sup>2</sup> Orders M-16, M-582, MO-1295, MO-1496, MO-1845, MO-2147, MO-2759.

[23] The possibility of reprisal and confrontation is addressed in the affected party's representations. The affected party questions why the appellant would seek his/her name, other than to confront or seek retaliation.

[24] Section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>3</sup>

[25] The city submits that the affected party understood that his/her name and contact information was supplied in confidence. The city cites its long-standing practice of keeping the identity of all informants strictly confidential and states that all its Enforcement Officers comply with this practice.

[26] On my review of the material before me, I am satisfied that the factors favouring privacy protection in sections 14(2)(e) and (h) apply to the information at issue. Having regard to the city's representations, I find that the affected party and the city reasonably expected that the identity of the affected party would be treated confidentially. I also find that the possibility of unwanted confrontation is relevant on these facts. The appellant himself has expressed anger at the events and a desire to pursue the matter with the affected party if and when he obtains their identity.

[27] The presumption under section 14(3)(b) and the factors in sections 14(2)(e) and (h) therefore all weigh against the disclosure of the information. I have been given no evidence supporting the application of any factor favouring disclosure. Accordingly, I find that disclosure of the affected party's name would be an unjustified invasion of that individual's personal privacy. I conclude that the information qualifies for exemption from disclosure under section 38(b) of the *Act*, subject to my review of the city's exercise of discretion.

**Issue C: Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[28] 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.

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<sup>3</sup> Order PO-1670.

[29] 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.

[30] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>4</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>5</sup>

[31] In support of its decision to exercise its discretion not to disclose the affected party's identifying information, the city states that it considered in good faith various relevant factors including:

- the principle that information should be available to the public and that exemptions to the right of access should be limited;
- balancing competing rights to privacy of the appellant and affected party;
- the nature of the information remaining at issue, the name of the complainant, is sensitive information in the context of by-law enforcement;
- that the city offers anonymity to informants through a long-standing practice of keeping the identity of all complainants strictly confidential and that all enforcement officers comply with this practice; and
- de-escalating any dispute between the parties.

[32] I am satisfied that the city took into account relevant factors and did not rely on any irrelevant considerations in the exercise of its discretion. I conclude that the city did not err in exercising its discretion to deny access to the affected party's identity, and I uphold the city's decision to deny access to this information under section 38(b).

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<sup>4</sup> Order MO-1573.

<sup>5</sup> Section 43(2).

**ORDER:**

I uphold the city's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Sherry Liang  
Senior Adjudicator

\_\_\_\_\_ October 4, 2013