

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3235

Appeal MA14-248

Toronto Community Housing Corporation

August 26, 2015

Summary: The appellant submitted a request to the Toronto Community Housing Corporation (TCHC) under the *Municipal Freedom of Information and Protection of Privacy Act* seeking access to a declaration of abuse, confirmation of abuse (with attaching correspondence) and a police record relating to a specific individual. In response, TCHC refused to confirm or deny the existence of any such records under section 14(5) on the basis that disclosure of information of this type would result in a presumed unjustified invasion of an individual's personal privacy. The appellant appealed the decision and took the position that the factor in section 14(2)(d) (fair determination of rights) was a relevant consideration weighing in favour of the disclosure of any responsive information. The appellant also raised the possible application of the public interest override in section 16. In this order, the adjudicator finds that responsive records, if they exist, would contain the personal information of the appellant, as well as an individual named in the request, and that the disclosure of the information, or even the confirmation of its existence, would result in an unjustified invasion of that individual's personal privacy under section 14(1). As a result, TCHC's reliance on section 14(5), as well as its exercise of discretion to apply that section, is upheld. The adjudicator also finds that the public interest override in section 16 has no application in this appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of personal information), 14(1), 14(2)(d), 14(3)(c), 14(5), 16 and 38(b).

Orders and Investigation Reports Considered: Orders M-615, MO-2891 and MO-2984.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of a decision of the Toronto Community Housing Corporation (TCHC) in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an "Applicant Declaration of Abuse," "Confirmation of Abuse" (and attaching letters) and a police record relating to the appellant and a named individual.

[2] In response to the request, the TCHC issued a decision letter to the requester, advising that it was relying on section 14(5) of the *Act* to neither confirm nor deny the existence of any records. The decision letter went on to add that if any such records existed, it would be exempt pursuant to the discretionary exemption in section 38(b), with reference to section 14(1) (personal privacy).

[3] The requester (now the appellant) appealed TCHC's decision to refuse to confirm or deny the existence of the requested records to this office. During the mediation of the appeal, the appellant explained that he wanted the requested records to show that the individual who filed the forms had gained "Special Priority Status" by providing false information to TCHC. The appellant also indicated that he believed records do exist and that his personal information is included in them.

[4] TCHC advised the mediator that if the records existed, they would contain the personal information of another individual, and that disclosure of the fact the records exist (or do not exist) would in itself convey information to the appellant that would constitute an unjustified invasion of the personal privacy of that individual. Also during mediation, TCHC raised the application of the discretionary exemption in section 13 (danger to safety or health) of the *Act* to the records, should they exist. Accordingly, the application of section 38(a), in conjunction with section 13, was added as an issue in this appeal.

[5] In discussion with the mediator, the appellant raised the possible application of section 16 (public interest override) of the *Act* to any responsive records (should they exist). The appellant believes there is a compelling public interest in "acting against" those who have fraudulently used TCHC services. The appeal was then transferred to the inquiry stage where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought and received representations from TCHC and the appellant. The adjudicator did not share TCHC's representations with the appellant, as they met this office's confidentiality criteria as set out in *Practice Direction 7*. Accordingly, TCHC's representations, although taken into consideration, will not be re-produced in this order. The appeal was then transferred to me for final disposition.

[6] For the reasons that follow, I uphold TCHC's decision to refuse to confirm or deny the existence of any records relating to the appellant's request pursuant to sections 14(1) and 14(5) of the *Act*. I also find that the public interest override in section 16 of the *Act* has no application in this appeal.

RECORDS:

[7] As set out in the appellant's request, the records, if they exist, would consist of an "Applicant Declaration of Abuse," "Confirmation of Abuse" (and attaching letters) and a police record relating to the appellant and a named individual.

ISSUES:

- A. Do the records, if they exist, contain "personal information" as defined in section 2(1) of the *Act*, and, if so, to whom do they relate?
- B. Does the discretionary exemption at section 38(b), read in conjunction with section 14(5) of the *Act*, apply to the records, if they exist?
- C. If records exist, did the city properly exercise its discretion under section 14(5) or 38(b) to refuse to confirm or deny their existence? If so, should this office uphold the exercise of discretion?
- D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(5) exemption?

DISCUSSION:

Issue A: Do the records, if they exist, contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records, if they exist, contain "personal information" and, if so, to whom it relates. For example, the personal privacy exemptions in section 38(b) or section 14, including the "refuse to confirm or deny" provision in section 14(5), can only apply to a record that contains "personal information." 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 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;

[9] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.¹ Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.² To qualify as personal

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[10] TCHC takes the position that any responsive records, if they exist, would contain the "personal information" of an individual other than the appellant.

[11] The appellant submits that if the records exist, they would contain information relating to him. The appellant also indicates that TCHC improperly collected his personal information,⁴ and that any information about him in the records is incorrect, defamatory and libelous.

[12] Having considered the parties' representations as well as the nature of information that any responsive records, if they exist, would reveal, I accept that they would contain the "personal information" of identifiable individuals as that term is defined in section 2(1) of the *Act*. The appellant is requesting access to an Applicant Declaration of Abuse, Confirmation of Abuse (and attaching letters) and a police record relating to him and another individual. To be responsive to this request, any records would necessarily contain both the personal information of the appellant and the individual named in the request.

[13] Based on the appellant's representations which suggest that he is concerned about inaccurate information or accusations being made against him, the responsive records would contain his name, together with the views or opinions of the individual named in the request about the appellant as contemplated by paragraph (g) of the definition of personal information in section 2(1). In addition, the responsive records, if they exist, would contain information relating to the criminal history of the appellant, falling within paragraph (b) of that definition in section 2(1).

[14] With respect to the individual named in the request, any responsive records, if they exist, would reveal this individual's name together with other "personal information" about them as contemplated by paragraph (h) of the definition of that term at section 2(1) of the *Act*. Typically, these types of records would also contain a great deal of "personal information" listed in the section 2(1) definition, possibly including information about the individual's marital or family status (paragraph (a)), identifying numbers or other particulars assigned to the individual (paragraph (c)), and the individual's address and telephone number (paragraph (d)).

[15] Therefore, I find that any responsive records, if they exist, would contain the personal information of both the appellant and the individual named in the request.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁴ I will not be addressing this claim, given that this is an appeal of an access decision not a complaint regarding an institution's collection and/or use of personal information.

Issue B: Does the discretionary exemption in section 38(b), read in conjunction with section 14(5) of the *Act*, apply to the records, if they exist?

[16] Under the *Act*, different exemptions may apply depending on whether or not a record contains the personal information of the requester. Where records contain the requester's own personal information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records contain the personal information of individuals other than the requester but not that of the requester, access to the records is addressed under Part I of the *Act* and the exemptions at section 14(1) may apply.

[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 right.

[18] 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.

[19] 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.

[20] Section 38 contains no parallel provision to section 14(5). Since I have found that if any responsive records exist, they would contain the appellant's personal information as well as that of an identifiable individual, the question arises whether TCHC can rely on section 14(5) in this case. Previous orders of this office have established that it can. Specifically, in Order M-615, Adjudicator John Higgins stated:

Section 37(2) provides that certain sections from Part I of the *Act* (where section 14(5) is found) apply to requests under Part II (which deals with requests such as the present one, for records which contain the requester's own personal information). Section 14(5) is not one of the sections listed in section 37(2). This could lead to the conclusion that section 14(5) cannot apply to requests for records which contain one's own personal information.

However, in my view, such an interpretation would thwart the legislative intention behind section 14(5). Like section 38(b), section 14(5) is intended to provide a means for institutions to protect the personal

privacy of individuals other than the requester. Privacy protection is one of the primary aims of the *Act*.

Therefore, in furtherance of the legislative aim of protecting personal privacy, I find that section 14(5) may be invoked to refuse to confirm or deny the existence of a record if its requirements are met, even if the record contains the requester's own personal information.

[21] Adjudicator Higgins' reasoning was followed by former Adjudicator Laurel Cropley in Order MO-2891 and Adjudicator Catherine Corban in Order MO-2984. Adjudicator Cropley considered section 38(b) when she upheld the London Police Services Board's decision to refuse to confirm or deny the existence of records that were subject to the law enforcement presumption in section 14(3)(b) and contained information relating to the requester, as well as that of another identifiable individual. Similarly, Adjudicator Corban upheld the City of Ottawa's decision to refuse to confirm or deny the existence of records that were subject to the eligibility for social service presumption in section 14(3)(c).

[22] I agree with the analysis and findings of all three adjudicators. Accordingly, I will consider whether section 14(5) may be invoked in the circumstances of this appeal.

[23] Section 14(5) reads:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

[24] This section gives an institution the discretion to refuse to confirm or deny the existence of a record in certain circumstances. A requester in a section 14(5) situation is in a very different position from other requesters who have been denied access under the *Act*. By invoking section 14(5), the institution is denying the requester the right to know whether a record exists, even when one does not. This section provides institutions with a significant discretionary power that should be exercised only in rare cases.⁵

[25] Before an institution may exercise its discretion to invoke section 14(5), it must provide sufficient evidence to establish both of the following requirements:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and

⁵ Order P-339.

2. Disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

[26] The Ontario Court of Appeal has upheld this approach to the interpretation of section 21(5) of the *Freedom of Information and Protection of Privacy Act*, which is identical to section 14(5) of the *Act*, stating:

The Commissioner's reading of s. 21(5) requires that in order to exercise his discretion to refuse to confirm or deny the report's existence the Minister must be able to show that disclosure of its mere existence would itself be an unjustified invasion of personal privacy.⁶

Part one: disclosure of the record (if it exists)

Definition of personal information

[27] Under part one of the section 14(5) test, the institution must demonstrate that disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information. I have found above that any records responsive to the request, if they exist, would contain the personal information of both the individual named in the request and the appellant.

Unjustified invasion of personal privacy

[28] Sections 14(1) to (4) provide guidance in determining whether disclosure of the records (if they exist), would or would not be an "unjustified invasion of personal privacy" under section 14(5).

[29] The appellant argues that section 14(1)(d) applies to the records, if they exist. Section 14(1)(d) permits an institution to disclose personal information if another Act of Ontario or Canada expressly authorizes the disclosure. In making this argument, the appellant states that both the *Charter of Rights and Freedoms* and section 139⁷ of the *Criminal Code of Canada* do not permit TCHC to refuse to confirm or deny the existence of the records. The appellant also submits that section 14(4)(b) is applicable as the records, if they exist, disclose details of a contract for personal service between an individual and an institution.

⁶ Orders PO-1809, PO-1810, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 4813 (C.A.), leave to appeal to S.C.C. dismissed (May 19, 2005), S.C.C. 30802.

⁷ This section deals with obstruction of justice in a judicial proceeding.

[30] After considering the representations submitted by TCHC and the appellant, I am satisfied that sections 14(1) and (4) do not apply to any records, if they exist, that would be responsive to the request. In particular, I find that the *Charter of Rights and Freedoms* and the *Criminal Code of Canada* have no application in the circumstances of this appeal. I also note that the contracts for personal service referred to in section 14(4)(b) relate to employment or service provider contracts. The type of records as described in the request, if they exist, would not relate to a personal service contract.

[31] Therefore, in determining whether the disclosure of the personal information in the responsive records (if they exist), would be an unjustified invasion of personal privacy pursuant to section 38(b), the next step is to consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁸ If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[32] The appellant submits that none of the presumptions in section 14(3) apply in this appeal.

[33] In my view, the personal information contained in any records responsive to the request, as framed by the appellant, would by definition fall within the ambit of the presumption in section 14(3)(c) which 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;

[34] Having considered the wording of the request, I accept that records that are responsive to the request, if they exist, would fall clearly within the ambit of the presumption in section 14(3)(c). As the request is framed, the appellant clearly seeks information about himself that might appear in any records relating to the determination of another individual's eligibility for social service benefits. As a result, I conclude that the records sought, if they exist, would contain information whose disclosure is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(c).

[35] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁹ The list of factors under section 14(2) is not exhaustive. The institution must

⁸ Order MO-2954.

⁹ Order P-239.

also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2).¹⁰

[36] The appellant's submits that the factor in section 14(2)(d) favouring the disclosure of the responsive information (if it exists), applies. Section 14(2)(d) states:

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,

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

[37] 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.¹¹

[38] The appellant states that the sole purpose of making the access request is to "pursue the matter" and use the records, if they exist, as evidence in an existing and proposed legal proceeding. Although the appellant states that he has the right to defend himself against false accusations and requires the information to be used in court, he has not provided any evidence to establish that any of the above-mentioned four requirements have been met. Accordingly, I find that the factor at section 14(2)(d) has no application in the current appeal.

¹⁰ Order P-99.

¹¹ 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.).

[39] I also find, based on my review of the representations of TCHC and the appellant that there are no other factors in section 14(2) favouring disclosure of the records, if they exist, that apply.

[40] I have found that the presumption at section 14(3)(c) applies in such a way that disclosure of any responsive records that might exist is presumed to constitute an unjustified invasion of personal privacy of the individual named in the request. I have also found that no factors in section 14(2) weighing in favour of disclosure of any responsive information (if it exists), apply. Accordingly, I find that the first part of the section 14(5) test has been established.

Part two: disclosure of the fact that the record exists (or does not exist)

[41] Under part two of the section 14(5) test, the institution must demonstrate that disclosure of the fact that a record exists (or does not exist) would in itself convey information to the appellant, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

[42] I have found that the disclosure of the existence or the non-existence of the records (if they exist) is presumed to be an unjustified invasion of an identifiable individual's personal privacy pursuant to the application of section 14(3)(c). I have also found that this presumption outweighs the factor in section 14(2)(d) raised by the appellant that weighs in favour of disclosure of the information, particularly because I find that this factor has not been established as relevant in the current appeal.

[43] Although not reproduced in this order, I took into consideration TCHC's confidential representations on the application of section 14(5). Based on all of the information before me, I am satisfied that disclosing the fact that information responsive to the appellant's request exists or does not exist would in itself convey exempt information, specifically, whether the person named in the request has ever applied or is eligible for social services benefits, the disclosure of which would constitute a presumed unjustified invasion of personal privacy under section 14(3)(c). Accordingly, I find that TCHC has met the second requirement under section 14(5) of the *Act*.

[44] I am satisfied that both requirements of the test for the application of section 14(5) of the *Act* have been met. Consequently, subject to my consideration of its exercise of discretion, I find that TCHC has properly invoked section 14(5) in response to the appellant's request.

[45] Having found that section 38(b), in conjunction with section 14(5) applies, it is not necessary for me to consider the application of the discretionary exemption in section 13 to the records, if they exist.

Issue C: If records exist, did TCHC properly exercise its discretion under sections 14(5) or 38(b) to refuse to confirm or deny their existence? If so, should this office uphold the exercise of discretion?

[46] The exemptions in sections 38(b) and 14(5) are discretionary and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[47] 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; or
- it fails to take into account relevant considerations.

[48] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² This office may not, however, substitute its own discretion for that of the institution.¹³

[49] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁴

- the purposes of the *Act*, including the principles that: information should be available to the public; individuals should have a right of access to their own personal information; exemptions from the right of access should be limited and specific; and the privacy of individuals should be protected;
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking his or her own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- the relationship between the requester and any affected persons; and

¹² Order MO-1573.

¹³ Section 43(2).

¹⁴ Orders P-344 and MO-1573.

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person.

[50] As previously stated, I have taken the TCHC's representations on this issue into consideration, but will not be disclosing them because they meet this office's confidentiality criteria. The appellant submits that TCHC has not exercised its discretion properly under section 38(b). The appellant argues that TCHC exercised its discretion in bad faith and/or for an improper purpose to avoid liability. The appellant states:

It takes into account false, fraudulent and malicious information provided only by the Tenant and disregards the rights of the Appellant. It fails to take into account the relevant considerations and facts brought by the Appellant and the purpose of the disclosure, again to cover their own liability in this matter.

[51] After considering the evidence before me, I found that conveying the existence or non-existence of records responsive to the appellant's request would constitute an unjustified invasion of the personal privacy of the individual identified in the appellant's request. Consequently, I found that TCHC is entitled to rely on sections 14(5) and 38(b) to refuse to confirm or deny the existence of records responsive to the appellant's request.

[52] Although not reproduced in this order, I took into consideration TCHC's confidential representations on its exercise of discretion, as well as the representations of the appellant. I find that TCHC took into account only relevant considerations and that its decision was made in good faith. Therefore, I am satisfied that TCHC has not erred in its exercise of discretion under sections 14(5) and 38(b) and I uphold it.

Issue D: Is there a compelling public interest in disclosure of the records, if they exist, that clearly outweighs the purpose of the section 14 exemption?

[53] As indicated previously, the appellant has raised the possible application of the public interest override in section 16 to the records, if they exist.

Section 16 provides that:

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.

[54] 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.

[55] 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.¹⁵

[56] 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.¹⁶ 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.¹⁷

[57] A public interest does not exist where the interests being advanced are essentially private in nature.¹⁸ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁹

[58] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.²⁰ Any public interest in *non*-disclosure that may exist also must be considered.²¹ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.²²

[59] The appellant submits that the information in the records, if they exist, violates section 11 of the *Charter of Rights and Freedoms* (the *Charter*) and that TCHC’s refusal to confirm or deny the existence of the records violates section 12 of the *Charter*. In addition, the appellant argues that TCHC improperly collected his personal information. The appellant states that in all these circumstances, he requires the records, if they exist, as evidence in an existing and contemplated legal proceeding. Accordingly, the appellant goes on to argue that there is a public interest in the disclosure of the records. The appellant states:

¹⁵ Order P-244.

¹⁶ Orders P-984 and PO-2607.

¹⁷ Orders P-984 and PO-2556.

¹⁸ Orders P-12, P-347 and P-1439.

¹⁹ Order MO-1564.

²⁰ Order P-984.

²¹ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²² Orders PO-2072-F, PO-2098-R and PO-3197.

If any of the information on the applications are admissible under the Criminal Code [sic] or show any violation of the Charter of Rights and Freedoms [sic], the disclosure will fall under section 16 of the Act [sic], as the Charter of Rights and Freedoms [sic] and Criminal Code of Canada [sic] exist to protect and ensure public safety and public interests.

[60] TCHC's position is that the interest that the appellant is advancing is essentially private in nature.

[61] Based on the evidence provided by the appellant on this issue, I find that there is no public interest in the disclosure of the records, if they exist. As noted earlier, any records, if they exist, would consist not only of the appellant's personal information, but also that of another individual.

[62] The application of the public interest override must assess whether the broader public interest would actually be served by disclosure of records. That is the purpose of weighing a compelling public interest, where one is found to exist, against the purpose of applicable exemptions. In this instance, I conclude that there is no public interest in the disclosure of the records, if they exist. I also find that even if there was a public interest in the disclosure of any responsive records, it does not clearly outweigh the purpose of the personal privacy exemption in section 14(5). I have found in my discussion of section 14(5) that there is personal information in the records, if they exist, and that disclosure of this type of personal information is presumed to constitute an unjustified invasion of personal privacy under section 14(1). Privacy protection is one of the enumerated purposes set out in section 1(b) of the *Act*. I find that the appellant has not provided sufficient evidence that any public interest, compelling or otherwise, exists in the disclosure of this type of personal information in the records, which would sufficiently outweigh the privacy protection purpose extant in the section 14(5) exemption. Therefore, I find that the public interest override provision in section 16 has no application in the present appeal.

ORDER:

[63] I uphold TCHC's decision and dismiss the appeal.

Original Signed By: _____
Cathy Hamilton
Adjudicator

August 26, 2015 _____