

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3421-F

Appeal MA15-532

City of Brampton

March 24, 2017

Summary: The appellant made a request to the City of Brampton (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to complaints made about his property. The city disclosed records to him, but withheld the names, addresses and telephone numbers of other individuals named in the records, relying on the mandatory personal privacy exemption found at section 14(1) of the *Act*. The appellant appealed. In Interim Order MO-3408-I, the adjudicator found that the discretionary personal privacy exemption at section 38(b) applies to the information at issue and ordered the city to exercise its discretion under section 38(b). The city subsequently issued a decision exercising its discretion in favour of non-disclosure of the information at issue. In this final order, the adjudicator upholds the city's exercise of discretion and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 38(b).

BACKGROUND:

[1] The appellant made a request to the City of Brampton (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to complaints made about his property. The city located records responsive to his request and disclosed the records to him, but withheld the names, addresses and telephone numbers of other individuals named in the records, relying on the mandatory personal privacy exemption found at section 14(1) of the *Act*. The appellant appealed.

[2] In Interim Order MO-3408-I, I found that the records at issue contain the personal information of both the appellant and the other individuals and that, therefore, the appropriate personal privacy exemption to consider is the discretionary exemption at section 38(b) of the *Act*, not the mandatory exemption at section 14(1). I found that the section 38(b) exemption applies to the information at issue. I found, further, that the city had not exercised its discretion under section 38(b), and ordered it to do so.

[3] The city subsequently issued a decision on its exercise of discretion. The city advised that it was exercising its discretion in favour of withholding the information at issue, and set out a number of factors that it had considered in exercising its discretion.

[4] I then invited and received representations from the appellant on the city's exercise of discretion.

[5] In this final order, I uphold the city's exercise of discretion under section 38(b) of the *Act* and dismiss the appeal.

RECORDS:

[6] The information at issue consists of the names, addresses and telephone numbers of individuals other than the appellant, as they appear on complaint information sheets.

DISCUSSION:

[7] The only remaining issue to be decided in this appeal is whether the city has exercised its discretion pursuant to section 38(b) of the *Act* and if so, whether I should uphold its exercise of discretion.

[8] 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. 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;

[9] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. In Interim Order MO-3408-I, I found that the discretionary personal privacy exemption at section 38(b) applies to the

personal information of the individuals other than the appellant.

[10] Since the section 38(b) exemption is discretionary, an institution may decide to withhold the exempt information, but may decide to disclose the information to the requester. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[11] 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.

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

Relevant considerations

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

- 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
 - 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
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the organisation

- 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
- the age of the information
- the historic practice of the institution with respect to similar information.

The positions of the parties

[14] In its decision letter to the appellant on the exercise of discretion, the city states:

In formulating a decision regarding the exercise of discretion, the City considered a number of factors:

1. The City considered the purposes of the *Act*, and sought to balance your right to access City records (including your own personal information contained in those records) with the affected parties' rights to privacy. The City noted that none of the affected parties have consented to the disclosure of their personal information.
2. The City considered the wording and intent of Section 38(b) of the *Act* (i.e. if disclosing the personal information at issue to you would result in the unjustified invasion of the personal privacy of affected parties). The City concluded that disclosure *would* be an unjustified invasion of personal privacy.
3. The City considered if you have a sympathetic or compelling need to receive the personal information at issue. As access was granted to the date, time and substance of all property standards complaints made about your property, the City concluded that there isn't a compelling reason to disclose the personal information at issue (i.e. the identity of the complainants).
4. The City considered the relationship between you and the affected parties. The City found the relationship adversarial (i.e. the relationship is between the owner of a property that is the subject of numerous property standards complaints and the complainants).
5. The City considered if disclosure would increase public confidence in the institution. As the City has a long practice of keeping the identity of complainants confidential (a practice that is frequently communicated to the public by Enforcement Officers), the City concluded that disclosure could damage public confidence in the institution. By-Law enforcement at the City is primarily complaint-driven. Keeping the identity of complainants confidential

is critical to a functioning enforcement program as potential complainants are often fearful of reprisal should their identity be disclosed.

6. The City considered the nature of the information and the extent to which it is sensitive to the affected parties. The City concluded that the information is highly sensitive in this context as the complainants expect their identities to be protected and could reasonably fear reprisal should their identities be disclosed.

7. The City considered its past practise and wishes to continue to keep the identity of all complainants confidential.

Finding that none of these factors favour disclosure of the names, addresses and telephone numbers of individuals who filed complaints with the City pertaining to your property, the City exercises its discretion and denies access to this information based on the exemption at section 38(b) of the *Act*.

[15] I have also carefully reviewed the appellant's representations. The appellant submits that he has a compelling need to know who has been making complaints over the past six years. He submits that the most recent complaint was made by someone who is not a resident of the area, and that the city handled the complaint in bad faith.

[16] As well, the appellant submits that the city's practice of keeping the identity of complainants confidential causes animosity and tension between neighbours, rather than giving them the opportunity to know who has made the complaint so that the neighbours may resolve their issues. He also takes issue with the city's statement that complainants could reasonably fear reprisal should their identities be disclosed, pointing out that in criminal matters, where threats of reprisals are arguably greater, accused persons have the right to know who their accusers are.

Analysis and findings

[17] Having reviewed the city's decision on its exercise of discretion and the appellant's representations, I am satisfied that I should uphold the city's exercise of discretion pursuant to section 38(b) of the *Act*. The city acknowledged that the records contain the appellant's own personal information. However, it is evident that the city, in its discretion, found that other relevant factors outweighed this factor. The lack of a sympathetic or compelling need for the information, the relationship between the appellant and the affected parties, and the sensitivity of the information are all legitimate factors for the city to have considered, as is the goal of fostering public confidence in the city and its by-law enforcement. I note, in particular, the city's submission that it relies on complaints in order to enforce its by-laws. Given this context, it was appropriate for the city to consider the potential damage to public

confidence should the information at issue be disclosed. I am persuaded that, in exercising its discretion in favour of non-disclosure, the city took into account relevant considerations and did not rely on irrelevant considerations.

[18] I have considered the appellant's representations and do not find them persuasive. Although the appellant alleges bad faith on the part of the city, there is no evidence before me that the city has acted in bad faith, either in its handling of the property complaints or its exercise of discretion under section 38(b). The appellant has also not explained how he has a sympathetic or compelling need to have the names and contact information of the complainants. From my review of the records, it is clear that any city orders resulted from the city's own inspection of the appellant's property. Therefore, the appellant's issue is with the city, not the individuals who lodged the complaints that led to the city's inspections. For similar reasons, I am also not persuaded that the analogy the appellant draws between the criminal justice system and the by-law enforcement system is an apt one. I am, therefore, satisfied that the city's concern about potential reprisals is a relevant factor.

[19] I conclude that the city has exercised its discretion under section 38(b) of the *Act* based on relevant factors, and that I should uphold the city's exercise of discretion.

ORDER:

I uphold the city's exercise of discretion under section 38(b) of the *Act*, and dismiss the appeal.

Original Signed by: _____
Gillian Shaw
Adjudicator

_____ March 24, 2017