

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3641

Appeal MA16-745

City of Stratford

July 31, 2018

Summary: This appeal addresses the appellant's request to the city of Stratford (the city) for access to the name of the complainant who complained about the appellant's property. The city withheld the complainant's name and contact information, relying on section 38(a) (discretion to refuse requester's own information) in conjunction with section 8(1)(d) (confidential source of information) to deny access to this information. In this order the adjudicator upholds the city's application of section 38(a) in conjunction with section 8(1)(d) to the information at issue, and finds that the city properly exercised its discretion in withholding the information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(d) and 38(a).

OVERVIEW:

[1] In 2016, the City of Stratford (the city) received a by-law complaint regarding the appellant's property. The city investigated and issued an enforcement order to the appellant including that the yard be maintained in a state of good repair. The appellant made a request to the city for disclosure of particulars of the complaint, including the identity of the complainant.

[2] The request was for:

The name of the person or persons who complained about [the appellant's property] in August and September. Please include the date and reasons for the complaint.

[3] The city located a single responsive record and issued a decision in which it granted partial access to it. The city disclosed the entire record except for the complainant's name and contact information on the grounds that that would disclose a confidential source of information or would violate another person's personal privacy rights and was therefore exempt pursuant to sections 8(1)(d) and 14 of the *Act*, respectively.

[4] The appellant appealed the city's decision. The parties engaged in mediation, where consent was sought from the complainant to release what the city initially identified as personal information contained in the record. The complainant did not consent and since further mediation was not possible, the appeal was moved to the adjudication stage, where an adjudicator conducts an inquiry under the Act.

[5] In beginning the inquiry, the adjudicator initially assigned to this appeal invited the city to make representations on the application of the discretionary exemption at section 38(a) (discretion to refuse a person's own personal information), read in conjunction with the section 8(1)(d) (confidential source of information) exemption, given that the record also contained the appellant's own personal information.

[6] The city submitted representations and asked that they not be shared with the appellant. The adjudicator rejected the city's request to keep its entire representations from the appellant and issued a decision to share those portions of the city's representations that he found did not meet this office's confidentiality criteria.¹

[7] The appellant was also invited to make representations on the application of the above-noted exemptions to the information at issue. The appeal was then assigned to me to complete the inquiry and dispose of the issues on appeal.

[8] For the reasons that follow, I find that the portions of the record withheld by the city are exempt from disclosure under section 38(a) read with section 8(1)(d), and that the city properly exercised its discretion in withholding the severed portions of the record.

RECORD:

The record is a one-page General Complaint Form dated September 2016.

ISSUES:

- A. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(d) exemption apply to the record at issue?
- B. Did the city exercise its discretion under section 38(a), in conjunction with section 8(1)(d), and if so, should this office uphold the exercise of discretion?

¹ Set out in sections 5 and 6 of *Practice Direction 7*.

DISCUSSION:

[9] By way of preliminary issue, the appellant, in his representations, argues that the city misled this office by referring to a single complaint when, he says, there were two complainants for two separate complaints. The initial request was for the names of the “person or persons” who complained in “August and September”.

[10] Given the appellant’s claim that there was a complaint in August in addition to the one in September, the mediator asked the city to check whether any additional information existed with respect to a second complaint. A representative from the city advised of a telephone conversation with the appellant regarding his property in August 2016, but that no records of a written complaint from the August complaint were made as the appellant had addressed the issue. However, when another complaint (the subject of the record at issue) was made in September 2016, the city created a written record and assigned it a file number. The city advised the mediator in an email that no other records relating to the appellant’s request exist other than the record in dispute. This email was shared with the appellant. Thereafter, mediation continued on the basis that there was one record documenting a single complaint, and this was reflected in the mediator’s report.

[11] In view of the discussions that took place regarding the number of written records in existence and the information conveyed to the appellant during mediation, I am satisfied that the responsive record is the single General Complaint Form dated September 2016. The reasonableness of the city’s search for records, or the existence of another record, did not advance to adjudication as an issue. Accordingly, the only issues in this appeal are the application of the section 38(a) exemption in conjunction with the 8(1)(d) exemption and the city’s exercise of discretion in its decision to withhold a portion of the record.²

Issue A: Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(d) exemption apply to the record at issue?

[12] The *Act* defines “personal information” at section 2(1) as recorded information about an identifiable individual, including their address and telephone number.³ Paragraph (h) of the definition of that term includes:

(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] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38, however, provides a number of

² The city also relied on the personal privacy exemption at section 14(1) of the *Act*. Given my findings on section 38(a) in conjunction with section 8(1)(d), it is not necessary for me to decide whether the personal privacy exemption at section 14(1) or 38(b) applies.

³ Paragraph (c) of the definition of “personal information” in section 2(1) of the *Act*.

exemptions from this right.

[14] In this case, the city relies on the exemption in section 38(a), read in conjunction with the exemption at section 8(1)(d), to withhold the requested information. In order for section 38(a) to apply, the record must contain the personal information of the appellant. The record sets out a complaint about the appellant's maintenance of his property. Since this is "recorded information about an identifiable individual", I find that the record contains the appellant's personal information.

[15] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁴

[16] Section 38(a) states:

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

(a) if section 6, 7, 8, 8.1, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[17] Section 8 contains law enforcement-related exemptions to the disclosure of information. Section 8(1)(d) provides that an institution may refuse to disclose a record if the disclosure could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter or disclose information furnished only by the confidential source.

[18] Previous decisions of this office have found that the term "law enforcement" applies to a municipality's investigation into a possible violation of municipal by-laws.⁵

Representations:

[19] The city submits that the contact information and name of the complainant in the record relates to information collected by the city as part of a by-law enforcement matter, that complaints made about by-law infractions qualify as law enforcement matters, and that it is a reasonable expectation of the public that the identity or source of a by-law complaint will remain confidential.

[20] In exercising its discretion, the city submits that it considered that no further complaints would be made by the public and that disclosure would interfere with law enforcement investigations if persons are not willing to come forward for fear that their identities would be disclosed. Finally, the city submits that it disclosed as much of the record as possible, withholding only the name and contact information of the complainant.

⁴ Order M-352.

⁵ Orders M-16 and MO-1245.

[21] In his representations, the appellant repeated his request for disclosure of the complainant's identity, including whether or not the complainant was a member of the public.

[22] The appellant's representations were silent on the exemptions to disclosure in the *Act* and in particular on whether the discretionary exemption at section 38(a), read with section 8(1)(d), applies to the information at issue.

Analysis and findings:

[23] In relying on the exemption in section 8(1)(d), an institution must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.⁶

[24] According to the city, individuals contacting it about a by-law complaint are advised that their contact information is required and will be kept confidential. The city submits that anonymous by-law complaints are not pursued in most cases and therefore, if an investigation is to proceed, the city requires the complainant's contact information. The record at issue was created based on the information provided by the complainant. The process included collection of that individual's contact information for follow-up.

[25] In this case, the information provided to the city led directly to by-law enforcement action. I accept the city's position that confidential sources of information such as complainants are a tool of law enforcement and I agree that to disclose their information to the subject of a by-law investigation could result in fewer complainants coming forward.

[26] Further, I find that it is reasonable for persons who make complaints or who supply information to an institution related to a law enforcement matter to expect that their information will be held in confidence, especially where, as in this case, the city represents that to be the case during the by-law enforcement process.

[27] Finally, it is also noteworthy that, throughout mediation and in his representations, the appellant continued to seek confirmation that certain individuals did not make the complaint, including whether or not the complainant was a municipal employee or a member of city council to whom personal privacy rules might not apply. The request for the names of individuals who did not make a complaint is outside the scope of the request and therefore of this appeal.

Issue B: Did the city exercise its discretion under section 38(a) in conjunction with section 8(1)(d)?

[28] Where an institution denies access under section 38(a), it must demonstrate that, in exercising its discretion, it considered whether a record should be released to

⁶ Order MO-1416.

the requester because the record contains his or her personal information.

[29] In exercising its discretion to withhold the name and contact information of the complainant, the city submits that it considered whether the information in the record should be released to the appellant but that, after also considering section 8(1)(d), the city decided to disclose as much of the record as possible. Indeed, the city disclosed the entire record with only the name and contact information of the confidential source removed.

[30] The city further submits that, as part of its exercise of discretion, it considered the effect disclosure of a confidential source would have on future complaints.

[31] I find that the city's exercise of discretion to withhold the identity of a confidential source was proper. The city weighed the appellant's right to access information that included his own personal information against the exemption in section 8(1)(d) and severed only the identity and contact information of the complainant. In doing so, the city considered the reasonable expectation of confidentiality on the part of the complainant and the chilling effect disclosure could have on future information being provided to the city by individuals regarding by-law enforcement matters. I find that these are relevant considerations.

[32] There is also no evidence that the city acted in bad faith or for an improper purpose. Accordingly, I uphold the city's exercise of discretion.

ORDER:

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

Original Signed by: _____
Jessica Kowalski
Adjudicator

_____ July 31, 2018