



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-4

Appeal M-910023

The Corporation of the City of Oshawa



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O R D E R

BACKGROUND:

This is an appeal from a decision dated January 11, 1991, made by the Corporation of the City of Oshawa (the "institution"). The decision was in response to a request by the appellant, made on December 19, 1990, in anticipation of and pursuant to the Municipal Freedom of Information and Protection of Privacy Act, 1989, (the "Act").

The request was for access to the name and address of the individual who made a complaint to the institution about the condition of the appellant's property. As a result of the complaint, the appellant received two "Notices of Violation" of certain of the institution's by-laws.

The record which the institution identified as containing information responsive to the request is entitled "Complaint Input Form". It is used by the institution's Department of Planning and Development to record telephone complaints received from citizens in connection with contraventions of by-laws of the institution.

On May 4, 1989, an individual made a complaint over the telephone concerning the property of the appellant. The telephone complaint was recorded on the Complaint Input Form. The first part of the form is used to record the complaint and contains the following information: the date of the complaint, the address of the home-owner (the appellant), details of the complaint, and the name, address and telephone number of the complainant. The second part of the form is used by the institution to locate the subject property and the property owner, and contains the following information: the municipal lot and plan number of the property, the municipal address of the property and the name of the registered owner.

The institution denied access to the record citing sections 8(1)(b), 8(1)(d), 14(1) and 14(2)(h) of the Act. The institution stated that

"these provisions apply to the records because law enforcement proceedings may result and the complaints were made in confidence."

On February 4, 1991, the appellant filed an appeal with this office. During the course of mediation, it became clear that the appellant wanted access to all information contained in the first part of the Complaint Input Form, not merely the name and address of the complainant. The second part of the Complaint Input Form does not contain information requested by the appellant and is therefore not at issue in this appeal. In turn, the institution reiterated its reasons for withholding access and protecting the identity of the complainant.

As settlement of this appeal was not effected, the appeal proceeded to an inquiry. Representations were received from the appellant, the institution and the complainant (the "affected person").

ISSUES/DISCUSSION:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies for exemption under section 8(1)(d) of the Act.
- B. Whether the information contained in the record qualifies for exemption under section 8(1)(b) of the Act.
- C. Whether the information contained in the record qualifies as "personal information", as defined in section 2 of the Act.
- D. If the answer to Issue C is yes, whether the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the person to whom the information relates.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the record qualifies for exemption under section 8(1)(d) of the Act.

The institution has relied on section 8(1)(d) of the Act to withhold disclosure of the record. Section 8(1)(d) of the Act states:

A head 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;

In order for the requested record to qualify for exemption under this section, the matter which generated the record must satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

In its representations, the institution has provided a description of the by-law enforcement process followed in this case, which it claims falls within clause (b) of the "law enforcement" definition.

The telephone complaint received on May 4, 1989, was recorded by the officer on duty on the Complaint Input Form of the Department of Planning and Development. This complaint initiated a process whereby an inspector investigated the complaint and inspected the property for by-law infractions. The on-site inspection confirmed that there were violations of Zoning By-law Number 3415 and Anti-debris By-law Number

15-83. The appellant was notified of the two violations by certified mail and was requested to bring the property into compliance within a specified time period. Upon expiry of the specified time period, the property was inspected for compliance.

Compliance with the by-laws was not achieved until May 30, 1991, when the file was closed. In cases where the property owner does not comply with a Notice of Violation, the inspector may lay charges pursuant to the by-law and the Provincial Offences Act, which charges are dealt with by either the Provincial Offences Court or the Ontario Court (Provincial Division).

Based on the foregoing, I am satisfied that the institution's process of by-law enforcement involves investigations or inspections which could lead to proceedings in a court of law where penalties could be imposed and, therefore, qualifies as "law enforcement" under the Act.

As to the issue of whether it is reasonable to expect that disclosure of the record would reveal the identity of a confidential source, in Order Number 139 dated January 19, 1990, former Commissioner Sidney B. Linden determined, in the context of section 14(1)(d) of the provincial Act, that the institution must provide evidence of the circumstances in which the information was given in order to establish confidentiality. In my view, the same holds true when a municipal institution relies on section 8(1)(d) of the Act to deny access to a record.

In its representations, the institution has provided a description of its practices and policy of by-law enforcement. The institution states that complaints are usually received over the telephone and employees are instructed to advise complainants that their identity and the information they provide will be treated as confidential. According to the institution, the physical distancing of telephone complaints, the assurances of confidentiality by the institution, together with the expectation of confidentiality by the public, are an integral part of the institution's by-law enforcement procedure and serve to maintain the effectiveness of this system. The institution submitted that it has

always been the practice and policy of the Planning and Development Department to treat complaints in a confidential manner and that any departure from this would gravely jeopardize its by-law enforcement system.

The affected person also made representations that "when I gave my complaint ... I was guaranteed that everything I said was in complete confidence, that my name never would be divulged and that I had no need to fear any reprisals." The affected person's submissions substantiate the institution's submission that the assurances of confidentiality given by the institution and the expectations of confidentiality expected by its citizens should be given due consideration.

Having considered the above, I am of the view that there is a reasonable expectation of confidentiality within the institution's process of by-law enforcement. As I have noted on page 1, the record contains the date of the complaint, the address of the property forming the subject of the complaint, a physical description of the property, and the name, address, and telephone number of the complainant. In my view, disclosure of the record would disclose the identity of a confidential source of information.

In reviewing the representations of the affected person and the institution, I am also satisfied that the other information contained in Part I of the Complaint Input Form is information that was furnished only by a confidential source. In the circumstances, I will not offer further comment in order to protect the identity of the affected person.

In summary, I am satisfied that the institution was justified in relying on section 8(1)(d) to deny access to the record. In my view, it has satisfied the burden of proof set out in section 42 of the Act.

Finally, as section 8 of the Act is a discretionary exemption, it is my responsibility to ensure that the head of the institution has properly exercised his or her discretion in deciding not to grant access to the record. I have carefully considered all the circumstances of this

appeal and am satisfied that the head has properly exercised his discretion in refusing to grant access to the record.

Having upheld the institution's decision to deny access to the record pursuant to section 8(1)(d) of the Act, it is not necessary for me to address Issues B, C and D.

ORDER:

I uphold the head's decision to deny access to the record.

Original signed by: _____
Tom Wright
Commissioner

December 11, 1991
Date