



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-105

Appeal M-9200443

Regional Municipality of Ottawa-Carleton



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ORDER

The Regional Municipality of Ottawa-Carleton (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of investigation reports relating to complaints about a named restaurant in the city of Ottawa from September 1990 to the present.

The Municipality identified three responsive records, all entitled "Report of Complaint Investigation" and each attached to a "Food Premises/Inspection Report". The Municipality denied access to the records in their entirety pursuant to section 8(2)(a) of the Act. The requester appealed the Municipality's decision.

Mediation was not successful, and notice that an inquiry was being conducted to review the Municipality's decision was sent to the appellant and the Municipality. Written representations were received from both parties.

In its representations, the Municipality states that the Health Department has always maintained a clear distinction between routine inspection reports and complaint-driven investigation reports. In line with the provisions of section 8(4) of the Act, routine restaurant health inspection reports are made available to the public without the need for a formal request under the Act. Complaint-driven investigation reports, on the other hand, are denied on the basis of section 8(2)(a).

All routine inspection reports relating to the subject premises were provided by the Municipality to the appellant, and are not at issue. The sole issue in this appeal is whether the discretionary exemption provided by section 8(2)(a) of the Act applies to the three complaint-driven investigation reports.

Section 8(2)(a) of the Act reads:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

For the records to qualify for exemption under section 8(2)(a), the Municipality must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement,

inspections or investigations; **and**

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

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Having reviewed the records, it is clear that they qualify as reports. They summarize the investigations conducted on the restaurant in question, make findings of fact, draw conclusions about the validity of the complaints received by the Health Department, and document the results of any action that the Health Inspectors have taken and any required follow-up action.

I also find that the records were prepared in the course of law enforcement inspections, thereby satisfying the second part of the test. The Health Protection and Promotion Act (the HPPA) establishes a health inspection scheme which is administered at the municipal level. Part of this scheme involves restaurant inspections (section 10(2)), and regulation 562/90 passed under the HPPA provides a detailed description of the standards to be met by restaurants, including ventilation, equipment, food handling and sanitation. Finally, section 101 of the HPPA provides that anyone who contravenes the statute or its regulations is guilty of an offence.

As far as the third part of the test is concerned, the HPPA authorizes Health Inspectors to carry out inspections and investigations and to issue orders. The Municipality points out in its representations that Health Inspectors in the Ottawa-Carleton region are also designated as Provincial Offenses Officers, with the authority to issue notices and tickets. In my view, the Municipality's Health Department has a clear mandate to enforce and regulate compliance with the HPPA. Health Inspectors have statutory authority to enter premises where a health hazard exists, conduct tests, examinations, investigations and inquiries, and issue written orders to remedy any identified problems.

Therefore, I find that all three parts of the test have been established, and the three compliant-driven investigation reports qualify for exemption under section 8(2)(a) of the Act.

Because section 8(2)(a) is a discretionary exemption, I have reviewed the Municipalities' representations regarding its decision to exercise discretion in favour of denying access, and I find nothing improper in the circumstances of this appeal.

ORDER:

I uphold the Municipality's decision.

Original signed by: _____ March 15, 1993
Tom Mitchinson
Assistant Commissioner