



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-158

Appeal M-9300066

Metropolitan Toronto Licensing Commission



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ORDER

BACKGROUND:

The Metropolitan Toronto Licensing Commission (the Commission) received a request pursuant to the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information held by the Commission which pertains to the requester and a business owned by the requester. The Commission located records responsive to the request and granted access in full to a portion of them, granted partial access to others, and denied access in total to the remainder. The Commission claimed the application of sections 8(1)(a), 8(2)(a), 12 and 14(1) of the Act to deny access in whole or in part. The requester appealed.

Mediation was not possible and notice that an inquiry was being conducted to review the decision of the Commission was forwarded to the Commission and the appellant. Representations were received from both parties.

In its representations, the Commission agreed to disclose to the appellant in full some of those records to which partial access had originally been granted, as well as several other records which had not been disclosed. The Commission also withdrew its claim for exemption to certain records under section 8(1)(a) and applied the provisions of sections 38(a) and (b) to other individual records.

PRELIMINARY ISSUES:

In its representations, the Commission submits that Records 36, 37, and 43 are not responsive to the appellant's request. I agree. Despite the very broad wording of the appellant's request, none of these three documents can be said to fall within any of the types of information indicated therein.

The three-page memo portion of Record 42 is duplicated by Record 151. The balance of Record 42 is not responsive to the request. Record 159 is a duplicate of Record 50. My decision on Records 42 and 50 will apply to their duplicates as well; I will not refer to Records 151 and 159 in this order.

ISSUES:

The issues arising in this appeal are:

- A. Whether Records 42, 46, 50, 56, 59, 60, 65, 70, 71, 75, 76, 77, 79, 80, 81, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 103, 106, 107, 109, 110, 113, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 132, 134, 147, 149, 150, 158, and 161, as well as the information which was not disclosed in Records 4, 6, 10, 139, 140, 141, 142, 143, 144 and 145 contain "personal information" as defined in section 2(1) of the Act.
- B. Whether the discretionary exemptions provided by sections 12 and 38(a) of the Act apply to

Records 46, 50, and portions of Records 51 and 52.

- C. If the answer to Issue A is yes, and the personal information relates solely to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies.
- D. If the answer to Issue A is yes, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.
- E. Whether the discretionary exemption provided by section 8(2)(a) of the Act applies to Records 42, 45, 46, 50, 51, 52, 56, 59, 60, 65, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 134, 147, 149, 150, 157, 159 and 161.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether Records 42, 46, 50, 56, 59, 60, 65, 70, 71, 75, 76, 77, 79, 80, 81, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 103, 106, 107, 109, 110, 113, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 132, 134, 147, 149, 150, 158, and 161, as well as the information which was not disclosed in Records 4, 6, 10, 139, 140, 141, 142, 143, 144 and 145 contain "personal information" as defined in section 2(1) of the Act.

The term "personal information" is defined in section 2(1) of the Act as:

"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;

Following a careful review of the records at issue in this appeal, I find that Records 56, 59, 60, 65, 70, 71, 75, 76, 77, 79, 80, 81, 85, 86, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 103, 106, 107, 109, 110, 113, 116, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 132, 147, 149, and 161, as well as those portions of Records 4 and 6 which were not disclosed to the appellant, contain the personal information of individuals other than the appellant.

I find that Records 42, 46, 131, 134, 150, 157, and 158 as well as those portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 which were not disclosed to the appellant, contain the personal information of the appellant as well as other individuals.

Records 50, 51, and 52 contain solely the personal information of the appellant.

The information which was not disclosed to the appellant from Records 4 and 6 consists of the business addresses of the Chair and Vice-Chair of the Commission. I do not find that this information qualifies as "personal information" within the definition expressed in section 2(1) of the Act (Orders 157 and P-369). As the Commission has not claimed any other exemptions for these records, Records 4 and 6 should be disclosed in full to the appellant.

ISSUE B: Whether the discretionary exemptions provided by sections 12 and 38(a) of the Act apply to Records 46, 50, and portions of Records 51 and 52.

The Commission claims that Records 46 and 50 and portions of Records 51 and 52 are exempt under section 12 of the Act.

Section 12 of the Act provides that:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1); and
2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Commission must provide evidence that the record satisfies either of the following tests:

1.
 - a) there is a written or oral communication; **and**
 - b) the communication must be of a confidential nature; **and**
 - c) the communication must be between a client (or his agent) and a legal advisor; **and**
 - d) the communication must be directly related to seeking, formulating or giving legal advice;

OR

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

[Orders 49, M-2 and M-19]

A record can be exempt under Branch 2 of section 12 regardless of whether the common law criteria relating to Branch 1 are satisfied. Two criteria must be satisfied in order for a record to qualify for
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exemption under Branch 2:

1. the record must have been prepared by or for counsel employed or retained by an institution; **and**
2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

[Order 210]

The Commission claims the application of both branches of the section 12 test to Records 46 and 50 and portions of Records 51 and 52. It has indicated, however, that it is only relying on the first part of the Branch 1 test.

Record 46

Record 46 is a five page letter dated February 13, 1991 addressed to the Commission's General Manager from the Commission's Solicitor. I find that Record 46 qualifies for exemption under the first part of the first branch of the section 12 test. The record is a written communication of a confidential nature between a client (the Commission's General Manager) and a legal advisor (the Commission's solicitor) which is directly related to the giving of legal advice.

Record 50

Record 50 is a three page letter dated September 4, 1991 addressed to the Commission's General Manager from a solicitor with the Metropolitan Toronto Legal Department. I find that Record 50 qualifies for exemption under the first part of the first branch of the section 12 test. I find that the record is a written communication of a confidential nature between a client (the Commission's General Manager) and a legal advisor (a solicitor employed by the Municipality of Metropolitan Toronto) which is directly related to giving legal advice.

Records 51 and 52

These records are internal Commission memoranda prepared by one employee for review by another; neither employee is Commission counsel. The Commission submits that paragraph 2 of Record 51 and paragraph 1 of Record 52 summarize the advice given by Commission counsel respecting the Commission's handling of charges brought against the appellant and others.

In my view, it is only the second sentence of paragraph 2 of Record 51 that summarizes the advice of counsel given in Record 46. Accordingly, this sentence only satisfies the first portion of the first branch of

solicitor-client privilege (Orders 135 and 170). It is only this sentence that also satisfies Branch 2 of the section 12 test.

Because under Issue A, I have found that Records 46, 50, and 51 contain the personal information of the appellant, I must determine if the Commission has properly exercised its discretion under section 38(a) of the Act to deny access to the appellant. Section 38(a) reads as follows:

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

if section 6, 7, 8, 9, 10, 11, **12**, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) provides the Commission with the discretion to refuse to disclose to the appellant his personal information where, among others, section 12 applies to the record. In any case in which the Commission has exercised its discretion under section 38(a), I look very carefully at the manner in which the Ministry has exercised its discretion. Provided that this discretion has been exercised in accordance with established legal principles, in my view, it should not be disturbed on appeal.

In reviewing the Commission's exercise of discretion in favour of refusing to disclose the records at issue in this appeal, I have found nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

ISSUE C: If the answer to Issue A is yes, and the personal information relates solely to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies.

Many of the records to which the exemption provided by section 14 was applied are of a similar nature. Accordingly, I will deal with them by grouping together those records which have common elements.

Records 56, 59, 60, 65, 122-129, 132, 149, and 161

These records are statements submitted to the Manager or Acting Manager of the Commission's Field Operations by various enforcement officers employed by the Commission. The statements outline certain factual information compiled by the officers in the course of their investigations concerning the alleged operation of an illegal taxi brokerage by the appellant and other individuals between February and November, 1990. The records contain the personal information of the drivers and owners of various taxis including the addresses, telephone numbers, dates of birth, drivers license numbers, taxi operator license numbers, vehicle registration numbers, insurance registrations, taxi, vehicle registration and serial numbers as

well as comments made by the drivers and owners about their employment arrangements with various individuals other than the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information except in certain circumstances, including section 14((1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 14(2) lists a number of factors to be considered in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In its representations, the Commission relies on the presumption provided by section 14(3)(b) of the Act. This section reads as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Commission submits that:

... the information contained in the record was compiled as part of an investigation by the institution of possible violations of Metropolitan Toronto By-law 20-85, which the institution is responsible for enforcing. Specifically, the institution was investigating the possible violation of subsection 2(49) of the By-law, i.e. carrying on a taxicab brokerage without a license.

I agree with the Commission's characterization of the personal information contained in these records. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies.

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must consider whether any other provisions of the Act come into play to rebut this presumption. A combination of listed and/or unlisted factors weighing in favour of disclosure might be so compelling so as to outweigh a presumption under section 14(3); however, such a case would be extremely unusual (Order 20).

Although the appellant does not specifically refer to section 14(2)(d), her representations indicate that it may have relevance in this appeal as she wishes to pursue a civil action against the Commission and its employees. Section 14(2)(d) states as follows:

A head in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all relevant circumstances, including whether,

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

In Order P-312, former Assistant Commissioner Tom Mitchinson, in discussing the provincial equivalent of section 14(2)(d), stated the following:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, 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.

In the circumstances of this appeal, I feel that section 14(2)(d) is a relevant consideration in determining
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whether the presumption of an unjustified invasion of personal privacy pursuant to section 14(3)(b) can be rebutted. However, in my view, the application of section 14(2)(d) alone is not sufficient to rebut the presumption contained in section 14(3)(b). Accordingly, I find that the presumption in section 14(3)(b) applies and the disclosure of the information contained in Records 56, 59, 60, 65, 122-129, 132, 149, and 161 would constitute an unjustified invasion of personal privacy.

Record 147

Record 147 is a memorandum from one Commission staff person to another which relates the content of a telephone conversation between the staff member and a taxi license owner. While the conversation did not directly concern the appellant, there are references to certain matters related to similar investigations conducted by the Commission.

For the reasons discussed above, I find that this record qualifies for exemption pursuant to section 14(3)(b) of the Act.

Records 70, 71, 75, 76, 77, 79, 80, 81, 85, 86, 88-98, 103, 106, 107, 109, 110, 113, 116, and 118-121

These records are letters which were sent to the holders of certain taxi licenses by the Commission's Acting Manager of Field Operations between February 14, 1990 and May 10, 1990. The body of the letter is identical in all of the correspondence. Each record contains the individual name, address, salutation and taxi number of the recipients of the letters.

In my view, these records should be released to the appellant with certain portions removed according to the principles of disclosure in section 4(2) of the Act which provides:

Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls within one of the exemptions.

Once the name, address, salutation, and taxi number of the recipients are severed, the balance of the record can be disclosed to the appellant. Without the personal identifiers, the information in the body of the records cannot be said to constitute the personal information of "identifiable individuals". Accordingly, there will be no unjustified invasion of the personal privacy of these individuals.

ISSUE D: If the answer to Issue A is yes, and the personal information relates to the appellant and other individuals, whether the discretionary exemption provided by [IPC Order M-158/June 30, 1993]

section 38(b) of the Act applies.

In my discussion under Issue A, I found that Records 42, 46, 131, 134, 150, 157, and 158 as well as those portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 which were not disclosed to the appellant contain the personal information of the appellant, as well as other individuals. As I have found Record 46 to be exempt pursuant to section 12 of the Act, I will not consider it here.

Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of an institution. However, this right of access is not absolute; section 38 provides a number of exceptions to this general right of access to personal information by the person to whom it relates. Specifically, section 38(b) of the Act 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;

Section 38(b) introduces a balancing principle. The Commission must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her privacy. If the Commission determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the Commission the discretion to deny the requester access to the personal information (Order 37).

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure **would** constitute an unjustified invasion of another individual's privacy.

As is the case in an analysis of the application of section 14, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester.

Records 10, 131, 134, 139-145, 157, and 158

In its representations, the Commission relies on the presumption provided by section 14(3)(b) that the disclosure of the personal information contained in Records 42, 131, 134, 150, 157, and 158 as well as those portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 which were not disclosed to the

appellant would constitute an unjustified invasion of the personal privacy of the other named individuals as the personal information contained therein was "compiled and is identifiable as part of an investigation into a possible violation of law."

I have previously cited the provisions of section 14(3)(b) of the Act.

I accept that Records 131, 134, 157, and 158, as well as those portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 which were not disclosed, were compiled as part of the previously described investigation into possible by-law violations by the appellant or a company operated by the appellant. For the same reasons as those I expressed in my discussion of Issue C, I am not satisfied that sufficient factors, enumerated in section 14(2) or unenumerated, exist to warrant the overriding of the presumption of unjustified invasion of the personal privacy insofar as Records 131, 134, 157, and 158, and the severed portions of Records 10, 139, 140, 141, 143, 144, and 145 are concerned.

Records 42 and 150

The Commission submits that the presumption provided by section 14(3)(d), as well as that provided by section 14(3)(b) applies to exempt Records 42 and 150 from disclosure. Section 14(3)(d) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to employment or educational history;

Records 42 and 150 deal with an internal discussion within the Commission as to the appropriateness of the manner in which certain prosecutions involving the appellant were conducted.

Section 14(3)(b) cannot have any application to these records as they do not pertain to the "investigation into a possible violation of law". Rather, these records relate to internal matters which the Commission was experiencing in conducting the **prosecution** of the appellant for a possible violation of a law.

Nor do I agree that Records 42 and 150 fall within the type of records which are covered by the presumption found in section 14(3)(d). This presumption comes into play to protect from disclosure records dealing with employment history. These records do not deal with the employment history of Commission staff per se, and relate information about employment matters only peripherally.

As there is no presumption under section 14(3) of the Act which applies to Records 42 and 150, I must consider the factors listed in section 14(2) to determine whether the disclosure of the personal information contained in these records would constitute an unjustified invasion of the personal privacy of those individuals whose personal information is contained therein.

In its representations, the Commission maintains that the factor enumerated in section 14(2)(i) should be considered as a factor weighing in favour of privacy. I am also of the view that section 14(2)(f) is a relevant consideration in the circumstances of this appeal. These sections of the Act state:

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,

- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record

The Commission submits that:

... records 42, 134 [which has already been found to be exempt], 150 and 151 contain allegations and criticisms respecting the employment performance of institution staff in respect to the handling of investigations and proceedings in relation to the appellant and her companies. It is submitted that the disclosure of such information may damage the reputation of the staff referred to in the records. It is further submitted that such damage would be unfair since it was never intended for such internal comment by staff members to be disclosed to individuals outside the institution. While it is impossible to say whether the criticisms and allegations contained therein are fair or accurate, their disclosure would nevertheless unfairly damage the reputation of those identified since they were never intended for public consumption.

I agree that the harm to which these affected persons may be subject would be "unfair" in all of the circumstances. Accordingly, I find that section 14(2)(i) is a relevant factor in this appeal.

It is also my view that the personal information of the other individuals contained in Records 42 and 150 can be considered to be highly sensitive in that release of the information would cause excessive personal distress to the individuals to whom the information relates (Order P-434).

In summary, I have found three factors under section 14(2) which are relevant considerations in the circumstances of this appeal. Sections 14(2)(f) and (i) weigh in favour of privacy protection. Section 14(2)(d), considered previously under Issue C, weighs in favour of disclosure. Accordingly, disclosure of the personal information of the Commission staff members contained in Records 42 and 150 to the appellant would constitute an unjustified invasion of the personal privacy of these individuals and section 38(b) applies.

Section 38(b) of the Act is a discretionary exemption. I have reviewed the Commission's representations

regarding the exercise of its discretion in favour of claiming the section 38(b) exemption to apply to Records 42, 131, 134, 150, 157, and 158, and those portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 which have been withheld from disclosure, and I find nothing improper in the circumstances.

ISSUE E: Whether the discretionary exemption provided by section 8(2)(a) of the Act applies to Records 42, 45, 46, 50, 51, 52, 56, 59, 60, 65, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 134, 147, 149, 150, 157, 159 and 161.

I have determined in Issue B that Records 46, 50 and one sentence in Record 51 are exempt from disclosure pursuant to sections 12 and 38(a); in Issue C that Records 56, 59, 60, 65, 122-129, 132, 149, and 161 are exempt under section 14; and under Issue D that Records 42, 131, 134, 150, 157, 158, and the severed portions of Records 10, 139, 140, 141, 142, 143, 144, and 145 are exempt under section 38(b) of the Act. Accordingly, I will confine my discussion of the applicability of section 8(2)(a) to Records 45, 52 and the balance of Record 51.

Section 8(2)(a) of the Act states as follows:

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;

The words "law enforcement" are defined in section 2(1) of the Act 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);

A number of orders have been issued under the provincial Freedom of Information and Protection of Privacy Act which involved section 14(2)(a) of that Act, which section is identical to section 8(2)(a) of the municipal Act. Commissioner Wright, in Order 200, enunciated the following three part test to determine whether a record qualifies for exemption from disclosure under section 8(2)(a).

For a record to qualify for exemption under section 8(2)(a) of the Act, the institution 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.

In addition, in order to satisfy the first part of the test, i.e., to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

Record 45

Record 45 consists of three memoranda dated September 5, 1990, September 7, 1990 and September 10, 1990. The memorandum of September 10 is addressed to the Commission's General Manager from the Manager of Field Operations. This portion of the record analyses and provides some context to the other two memoranda for the benefit of the General Manager. The September 5 memo is addressed to the Commission's Manager of Field Operations from the Senior Enforcement Officer and details a schedule of monitoring and observing the appellant's business. The information contained in the September 7 memorandum, addressed to the Commission's Manager of Field Operations from the Senior Enforcement Officer is similar in nature to that in the September 5 memorandum.

In my view, all three memoranda are properly considered together and qualify as a "report" as set out in Order 200.

The report was prepared in the course of a law enforcement investigation into the possible violation of By-law 20-85 of the Municipality of Metropolitan Toronto by an agency charged with the enforcement of that By-law, the Metropolitan Licensing Commission. I find, therefore, that all aspects of the test for exemption under section 8(2)(a) have been established for Record 45.

Records 51 (the remaining portion) and 52

As I have noted, these records are internal memoranda dated April 2, 1991 and April 5, 1991 between the Commission's Manager of Field Operations and the Commission's General Manager. I cannot agree that the test enunciated in Order 200 for a "report" has been met for either of these records. I find that these records do not collate or consider information in the manner contemplated by the section. Accordingly, I find that neither qualifies for exemption under section 8(2)(a).

I have reviewed the representations of the Commission as to the exercise of its discretion to deny access to Record 45 pursuant to section 8(2)(a) of the Act. I find nothing improper with that exercise of discretion. Accordingly, I will not interfere with it on appeal.

ORDER:

1. I uphold the Commission's decision to not disclose to the appellant Records 42, 45, 46, 50, 56, 59, 60, 65, 122, 123, 124, 125, 126, 127, 128, 129, 131, 132, 134, 147, 149, 150, 157, 158, 161, and the undisclosed information in Records 10, 139, 140, 141, 142, 143, 144, and 145.
2. I order the Commission to disclose to the appellant those portions of Records 4 and 6 that were not previously disclosed to him, as well as Records 51 and 70, 71, 75, 76, 77, 79, 80, 81, 85, 86, 88-98, 103, 106, 107, 109, 110, 113, 116, and 118-121 in accordance with the highlighted copy of these records which I have provided to the Freedom of Information Co-ordinator of the Commission with a copy of this Order. The portions which are highlighted should **not** be disclosed. These records should be disclosed to the appellant within 15 days of the date of this Order.
3. In order to verify compliance with this Order, I order the Commission to provide me with a copy of the records which were disclosed to the appellant, pursuant to Provision 2 **only** upon request.

Original signed by: _____ June 30, 1993
 Anita Fineberg
 Inquiry Officer