



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-295**

## **Appeal M-9200449**

### **Metropolitan Licensing Commission**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Municipality of Metropolitan Toronto received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records of a personal nature relating to the requester which were compiled subsequent to an earlier request from the same individual. The Municipality transferred the request to the Metropolitan Licensing Commission (the Commission) pursuant to section 18(3) of the Act as it appeared that the Commission had a greater interest in the record.

The Commission located a number of records responsive to the request and granted access to a portion of them. Access to other documents was, however, denied pursuant to the exemptions provided by sections 7, 12, 14, 15 and 38(a) of the Act. Access to other records and portions of records were denied by the Commission on the basis that they were not responsive to the request. The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, the Commissioner's office notified 14 individuals whose rights might be affected by the disclosure of the records at issue. As further mediation was not successful, notice that an inquiry was being conducted to review the decision of the Commission was sent to the appellant, the Commission and 14 affected persons. Representations were received from the Commission only.

The records at issue consist of 26 documents comprised of memoranda, letters, notes and daytimer pages. The records and the exemptions claimed for each document are more fully described in Appendix "A" to this order.

## PRELIMINARY ISSUE:

In its representations, the Commission submits that Records 5, 22, 37, 39, 40, 54, 59, 66 and 86 in their entirety, and the final entries on Records 42 and 81, and the first, fourth, fifth and last four paragraphs of Record 88, contain information which is not responsive to the request. I have carefully examined the information contained in these documents and agree that these records, or the information contained in them which was withheld from disclosure, does not relate to the requester and is, therefore, not responsive to her request.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records qualifies as "personal information" as defined by section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies to the records.

- C. Whether the discretionary exemptions provided by sections 7(1) and 38(a) of the Act apply to those portions of Records 16 and 41 which were not disclosed to the appellant.
- D. Whether the discretionary exemptions provided by sections 12 and 38(a) of the Act apply to those portions of Records 23, 31, 34, 41, 42, 43, 50, 56, 58, 60, 61, 63, 64, 65, 67, 70, 71, 73, 81, 87, 88, 90, and portions of Records 57, 62, and 91 which were not disclosed to the appellant.
- E. Whether the discretionary exemptions provided by sections 15(a) and 38(a) of the Act apply to Record 19.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined by section 2(1) of the Act.**

Section 2(1) of the Act defines "personal information", to mean:

recorded information about an identifiable individual, including,

...

- (e) the personal opinions or views of the individual except if they relate to another individual,

...

- (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;

I have carefully examined the records at issue and find that all of them contain information which qualifies as personal information under the definition described above. I further find that Records 31, 34, 50 and 81 contain only the personal information of the appellant. Records 10, 16, 19, 23, 41, 43, 56, 58, 60, 61, 62, 63, 64, 65, 67, 70, 71, 73, 87, 88, 90 and 91 contain personal information relating to the appellant and other identifiable individuals.

**ISSUE B: If the answer to Issue A is yes, and the information relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of**

**the Act applies to the records.**

In my discussion of Issue A, I found that a number of the records at issue contain the personal information of the appellant and a number of other identifiable individuals.

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. One such exemption is found in section 38(b) of the Act, which reads as follows:

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;

As has been stated in a number of previous orders, section 38(b) introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his or her own personal information against the rights of other individuals to the protection of their personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

In their representations, the Commission claims the application of the presumption contained in section 14(3)(d) of the Act to the records. This section reads:

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;

Although the records contain information which describe certain incidents that took place during the course of the appellant's employment, in my view it cannot be said that they relate to the employment history of either the appellant or the affected persons.

I have considered the application of the other presumptions contained in section 14(3) and find that none are applicable to the present appeal.

Section 14(2) of the Act provides some criteria to be considered in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. In its representations, the Commission indicates that the consideration described in section 14(2)(f) of the Act is applicable to the

present appeal. This section states that:

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,

the personal information is highly sensitive;

The Commission submits that the information contained in the records:

... reveals the content of sensitive, volatile and personal labour relations matters of someone other than the appellant. Although, as the record attests, the information may pertain to the handling of the appellant's employment situation, the information nonetheless relates to individuals other than the appellant and their conduct in events leading up to the discipline and ultimate termination of the appellant.

In Order P-434, former Assistant Commissioner Tom Mitchinson had occasion to address the application of section 21(2)(f) of the Freedom of Information and Protection of Privacy Act, which is identical to section 14(2)(f) of the Municipal Act in relation to records containing accounts of workplace related incidents involving a requester and other individuals. In this order, Assistant Commissioner Mitchinson made the following statement:

Although I can accept that release of this information might cause some level of embarrassment to certain affected persons, I do not feel this is sufficient to bring it within the scope of section 21(2)(f). In my view, in order to properly be considered "highly sensitive", the Ministry and/or the affected persons resisting disclosure must establish that release of the information would cause excessive personal distress to the affected persons.

With the exception of the submission regarding Record 65, I have not been provided with sufficient evidence by either the Commission or the affected persons to establish that the disclosure of the information contained in the records at issue would cause excessive personal distress to the affected persons. Record 65 contains information which, if disclosed, would cause excessive personal distress to one of the affected persons to this appeal. Accordingly, I find that the consideration provided by section 14(2)(f) of the Act is applicable to Record 65 only.

For the reasons described above, with the exception of Record 65, I find that there do not exist any factors under section 14(2) of the Act which weigh in favour of protecting the privacy interests of the affected persons. On this basis, my conclusion is that disclosure of the personal information contained in these records would not result in an unjustified invasion of the personal privacy of these individuals. Accordingly, the exemption provided under section 38(b) of the Act has no application to the other records at issue in this appeal.

**ISSUE C: Whether the discretionary exemptions provided by sections 7(1) and 38(a) of the Act apply to those portions of Records 16 and 41 which were not disclosed to the appellant.**

Section 7(1) of the Act provides as follows:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders 118, M-265 and M-287).

In its representations, the Commission claims that the undisclosed portions of Records 16 and 41 "contain communications from employees or consultants employed by the institution setting out a suggested course of action for ultimate acceptance or rejection." I agree that section 7(1) of the Act is applicable to these portions of Records 16 and 41 as the information contained in them relates to a suggested course of action which may be accepted or rejected by the recipient of the communication.

As I have found under Issue A that Records 16 and 41 contain the personal information of both the appellant and the affected persons, I must consider the application of section 38(a) of the Act, which reads:

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]

This provision gives the Commission the discretion to disclose an individual's own personal information in situations where one of the enumerated exemptions would otherwise apply. I have reviewed the representations of the Commission on the exercise of its discretion to not release these portion of the records and find nothing improper in the manner in which this determination was made.

**ISSUE D: Whether the discretionary exemptions provided by sections 12 and 38(a) of the Act apply to those portions of Records 23, 31, 34, 41, 42, 43, 50, 56, 58, 60, 61, 63, 64, 65, 67, 70, 71, 73, 81, 87, 88, 90, and portions of Records 57, 62, and 91 which were not disclosed to the appellant.**

In Orders M-120 and M-121, former Inquiry Officer Asfaw Seife addressed the application of section 12 to a number of records created by the Commission involving the identical parties to this appeal. I was also called upon to address the identical issue involving the same parties in Order M-257. The representations received from the Commission are essentially identical to those made in the previous appeals. Accordingly, I see no reason to vary the conclusion reached in the previous orders that the **dominant** purpose for the preparation of the records was not in contemplation of litigation, as is required by Branch 2 of the section 12 exemption. I find, therefore, that section 12 does not apply to exempt from disclosure Records 23, 31, 34, 41, 42, 43, 50, 56, 58, 60, 61, 63, 64, 65, 67, 70, 71, 73, 81, 87, 88, 90, and portions of Records 57, 62, and 91 which were not disclosed to the appellant.

**ISSUE E:      Whether the discretionary exemptions provided by sections 15(a) and 38(a) of the Act apply to Record 19.**

Section 15(a) states that:

A head may refuse to disclose a record if,

the record or the information contained in the record has been published or  
is currently available to the public;

In its representations, the Commission states that Record 19 is a copy of a decision of an arbitrator in a grievance hearing initiated by the appellant and her union and that, for a fee, a copy of the decision is available from the Office of Arbitration of the Ontario Ministry of Labour. The Commission further provides evidence to indicate that the appellant has been advised of this fact.

I am of the view, accordingly, that section 15(a) of the Act applies to exempt Record 19 from disclosure as it is a document which is currently available to the public.

As I have found under Issue A that Record 19 contains the personal information of both the appellant and one of the affected persons, I must consider the application of section 38(a) of the Act, which reads:

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]

This provision gives the Commission the discretion to disclose an individual's own personal information in situations where one of the enumerated exemptions would otherwise apply. I have reviewed the representations of the Commission on the exercise of its discretion not to release this record and find nothing improper in the manner in which this determination was made.

**ORDER:**

1. I uphold the Commission's decision to deny access to Records 19 and 65 in their entirety and to those portions of Records 16 and 41 as indicated on the highlighted copy which I have provided to the Freedom of Information and Protection of Privacy Co-ordinator along with a copy of this order. Those portions of Records 16 and 41 which have been highlighted are **not** to be disclosed to the appellant.
2. I order the Commission to disclose to the appellant the remaining records within thirty-five (35) days of the date of this order but not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I order the Commission to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon request.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ March 30, 1994



## APPENDIX "A"

RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DISPOSITION
10	Memo dated 10/25/91	14, 38(b)	Disclosed
16	Paragraph 4 of Memo dated 11/12/91	7(1)	Not disclosed
19	Arbitrator's Decision	15(a)	Not disclosed
23	Memo with attachments dated 01/09/92	12, 38(a) and (b)	Disclosed
31	Handwritten notes dated 02/11/92	12, 38(a) and (b)	Disclosed
34	Page 4 of Letter dated 02/17/92	12, 38(a) and (b)	Disclosed
41	Memo dated 03/11/92	7(1), 12, 38(a) and (b)	Partly Disclosed
43	Minutes of Grievance Meeting 03/13/92	14, 38(a) and (b)	Disclosed
50	Notes of Grievance Meeting 05/05/92	12, 38(a) and (b)	Disclosed
56	Notes of Grievance Meeting 07/14/92	12, 38(a) and (b)	Disclosed
57	Letter dated 07/16/92	12, 38(a) and (b)	Disclosed
58	Memo dated 07/22/92	12, 38(a) and (b)	Disclosed
60	Memo dated 07/27/92	12, 38(a) and (b)	Disclosed
61	Notes of Meeting dated 07/30/92	12, 38(a) and (b)	Disclosed
62	Memo dated 07/30/92 with attachments	12, 38(a) and (b)	Disclosed
63	same as 58		
64	Daytimer 07/30/92	12, 38(a) and (b)	Disclosed
65	Memo dated 07/31/92	12, 14(2)(f), 38(a) and (b)	Not disclosed
67	Daytimer 07/31/92	12, 38(a) and (b)	Disclosed

<b>RECORD NUMBER</b>	<b>DESCRIPTION</b>	<b>EXEMPTION(S) CLAIMED</b>	<b>DISPOSITION</b>
70	Notes of Meeting 07/31/92	12, 38(a) and (b)	Disclosed
71	Notes of Meeting 07/30/92	12, 38(a) and (b)	Disclosed
73	Notes of Meeting 08/04/92	12, 38(a) and (b)	Disclosed
87	Handwritten notes	12, 38(a) and (b)	Disclosed
88	Daytimer notes 10/05/92	12, 38(a) and (b)	Disclosed
90	Notes of Meeting 10/05/92	12, 38(a) and (b)	Disclosed
91	Letter dated 10/06/92 with Notes dated 10/05/92	12, 38(a) and (b)	Disclosed