



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-296**

**Appeal M-9300011**

**Metropolitan Licensing Commission**



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# ORDER

## BACKGROUND:

The Metropolitan Licensing Commission (the Commission) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all documentation compiled since February 1, 1992, including letters or memoranda in the custody or control of the Commission, which concern the requester, an employee of the Commission. The records are concerned with a number of work-related incidents involving the requester and a former employee of the Commission. The Commission located records responsive to the request and denied access to a portion of them pursuant to the exemptions contained in sections 11(1) and 14(1) of the Act. The requester appealed this decision to the Commissioner's office.

During the mediation stage of the appeal, the Commissioner's office notified three persons whose interests might be affected by the disclosure of the records at issue, pursuant to section 21 of the Act. Two of these parties consented to the disclosure of the records pertaining to their interests but the third (the affected person) did not. In addition, the Commission withdrew its claim for exemption under section 11(e) of the Act.

Further mediation of this appeal was not successful and notice that an inquiry was being conducted to review the Commission's decision was sent to the Commission, the appellant and the affected person. Representations were received from the Commission and the affected person.

Following receipt of the representations of the parties, the Commission located a number of additional records which are responsive to the request. The Commission then sent a new decision letter to the appellant where access was granted, in whole or in part, to a number of these records. The remaining records were withheld in their entirety based on the exemptions contained in sections 7(1), 12, 14 and 38(a) and (b) of the Act. Additional representations specific to these records were made by the Commission. The appellant and affected person declined the opportunity to make additional representations.

A brief description of the records at issue, along with the exemptions claimed for each and their disposition are contained in Appendix "A" to this order.

## 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 Record 33 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 5, 6, 7, 8, 9, 10, 11, 27, 30, 32, 33, 34, 35 and 36 which were not disclosed to the appellant.

## **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", in part, as "recorded information about an identifiable individual ...".

I have carefully examined the records at issue and find that they all contain personal information under the definition described above. I further find the personal information relates to the appellant and the affected person. In addition, Records 22 and 30 contain the personal information of individuals who have consented to the disclosure of these documents.

**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.**

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. If the head determines that the release of the information would constitute an unjustified invasion of another individual's personal privacy, then section 38(b) gives the head the discretion to deny the requester access to the personal information.

In my discussion of Issue A, I found that the records at issue contain the personal information of the appellant and the affected persons. 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 its representations, the Commission claims that the presumption contained in section 14(3)(d) of the Act applies 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 describe certain incidents which took place during the course of the appellant's employment, they deal primarily with a number of personal disputes involving the appellant and the affected person which have given rise to a series of grievances, civil litigation and appeals to the Commissioner's office. In my view, it cannot be said that they relate to the employment history of either the appellant or the affected person.

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 appellant played a role in the situations giving rise to some of these matters, the information nonetheless relates to individuals other than 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) to records containing accounts of workplace related incidents involving a requester and other individuals. There, he made the following comments:

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.

I have not been provided with sufficient evidence by either the Commission or the affected person to establish that the disclosure of the information contained in the records at issue would cause excessive personal distress to the affected person. Accordingly, I find that the consideration provided by section 14(2)(f) of the Act has no application to the present appeal.

Based on the representations provided to me and my independent review of the records, 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 person. On this basis, my conclusion is that the disclosure of the personal information contained in these records would not result in an unjustified invasion of the personal privacy of the affected person. Accordingly, the exemption provided under section 38(b) of the Act has no application to the 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 Record 33 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 submits that lines 20 to 24 on page 2 of Record 33 "contain advice of employees to other members of staff". I agree that the information contained in this portion of Record 33 is properly exempt from disclosure as it contains the advice of an employee of the Commission as to a course of action to be taken which may either be accepted or rejected by its recipient.

As I have found under Issue A that Record 33 contains the personal information of both the appellant and the affected person, 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 and find nothing improper in the manner in which this determination has been made.

**ISSUE D: Whether the discretionary exemptions provided by sections 12 and 38(a) of the Act apply to those portions of Records 5, 6, 7, 8, 9, 10, 11, 27, 30, 32, 33, 34, 35 and 36 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. In both of these cases, the Commission's reliance on section 12 was not upheld. In Order M-257, I was called upon to address the identical issue involving the same parties and similar records. The records at issue in the present appeal and the representations received from the Commission are virtually identical. Accordingly, I see no reason to vary the conclusion reached in the previous orders insofar as the application of section 12 to records of a similar nature is concerned. I find, therefore, that sections 12 and 38(a) do not apply to exempt from disclosure Records 5, 6, 7, 8, 9, 10, 11, 27, 30, 32, 33, 34, 35 and 36.

**ORDER:**

1. I uphold the decision of the Commission to deny access to lines 20-24 on page 2 of Record 33.
2. I order the Commission to disclose Records 2, 3, 5, 6, 20, 21, 22, 23, 24, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37 and 38 in their entirety and the remaining portions of Record 33 to the appellant within thirty-five (35) days of the date of this order, and not earlier than the thirtieth (30th) day following the date of this order. For greater certainty, I have forwarded a copy of Record 33 to the Freedom of Information and Protection of Privacy Co-ordinator of the Commission with this order. The highlighted portion of this record indicates the information which is **not** to be disclosed.
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
2	Memo dated 03/11/92	14(1), 14(2)(f), 14(3)(d)	Disclosed
3	Memo dated 03/12/92	14(1), 14(2)(f), 14(3)(d)	Disclosed
5	Letter dated 03/25/92	14(1), 14(2)(f), 14(3)(d)	Disclosed
6	Letter dated 03/13/92	14(1), 14(2)(f), 14(3)(d)	Disclosed
20	Notes dated 06/01/92	12, 14(1), 14(3)(d)	Disclosed
21	Memo dated 07/30/92 with attachments	12, 14(1), 14(3)(d)	Disclosed
22	Notes dated 07/31/92	12, 14(1), 14(3)(d)	Disclosed
23	Notes dated 10/05/92	12, 14(1), 14(3)(d)	Disclosed
24	Notes dated 10/05/92	12, 14(1), 14(3)(d)	Disclosed
26	Notes dated 07/31/92	12, 14(1), 14(3)(d)	Disclosed
Unnumbered	Notes dated 06/03/92	12, 14(1), 14(3)(d)	Disclosed
27	Grievance hearing minutes dated 03/13/92	12, 14, 38(a) and (b)	Disclosed
28	Letter dated 03/13/92	14	Disclosed
30	Notes of Grievance meeting	12, 14, 38(a) and (b)	Disclosed
31	Letter dated 06/10/92	14	Disclosed
32	Memo dated 07/22/92	12, 14, 38(a) and (b)	Disclosed
33	Memo dated 07/27/92	12, 14, 38(a) and (b)	Partly Disclosed
34	Notes dated 07/30/92	12, 14, 38(a) and (b)	Disclosed
35	Daytimer notes dated 07/30/92	12, 14, 38(a) and (b)	Disclosed
36	Daytimer notes dated 07/31/92	12, 14, 38(a) and (b)	Disclosed
37	Letter dated 08/04/92	14	Disclosed



RECORD NUMBER	DESCRIPTION	EXEMPTION(S) CLAIMED	DISPOSITION
38	Daytimer notes dated 09/08/92	14	Disclosed