



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-282

Appeal M-9300228

The Corporation of the City of London



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ORDER

BACKGROUND:

The Corporation of the City of London (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information on the City's dealings with individuals and businesses associated with a particular address. In its response, the City stated that some records were not under its custody or control, and therefore not subject to the Act, and denied access to other records on the basis of solicitor-client privilege. The requester appealed.

During the mediation stage of this appeal, the request was clarified. The appellant agreed to narrow the request to include only the following: (1) information in the City's possession relating to damage to his compact disk player on March 11, 1993, and (2) information relating to an in camera meeting of the municipal council held on May 17, 1993, at which his claim for compensation for damage to the compact disk player was discussed.

The City then released some of the records responsive to the clarified request, and denied access to four records under the exemption in section 7(1) of the Act. The appellant decided to continue his appeal on the basis that he still seeks access to these four records, and because he believes that additional responsive records should exist.

Further mediation was not successful and notice that an inquiry was being conducted to review the City's decision was sent to the City and the appellant. Representations were received from the City only.

The records at issue consist of three letters written by the City's insurance adjusters to the City dated April 14, 16 and 23, 1993 (Records 8, 9 and 12, respectively) and a memorandum from the City's Manager of Insurance and Risk Administration to the City's Board of Control dated May 6, 1993 (Record 19).

ISSUES:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. Whether the records qualify for exemption under section 7(1) of the Act.
- C. If the records contain the personal information of the appellant and the answer to Issue B is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.
- D. Whether the City conducted a reasonable search for responsive records.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act defines "personal information" as "recorded information about an identifiable individual". The records contain information relating to the appellant's claim for compensation for damage to his personal property. In my view, the records contain the appellant's personal information.

ISSUE B: Whether the records qualify for exemption under section 7(1) of the Act.

Section 7(1) of the Act states 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 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 P-348, P-356 and P-529).

I have carefully considered the representations submitted by the City regarding the application of section 7(1). I have also reviewed the records to determine whether they qualify for exemption under section 7(1).

Records 8, 9 and 12 are reporting letters to the City from its insurance adjusters. In my view, part of one sentence on page 1 of Record 9 contains a suggested course of action to be accepted or rejected by the City. The City's representations state that the adjusters were consultants directly retained by the City. In the circumstances of this appeal, I accept that the City did in fact retain the adjusters as its own consultants. Accordingly, in my view, this portion of Record 9 qualifies for exemption under section 7(1). Records 8 and 12 in their entirety, and the remainder of Record 9, do not contain "advice" or "recommendations" and therefore do not qualify for exemption under section 7(1).

Record 19 is a memorandum to the City's Board of Control from the City's Manager of Insurance and Risk Administration. In my view, the sentence in this record under the heading "Recommendation" sets out a suggested course of action to be accepted or rejected by the Board of Control. The author of the memorandum is a City employee. Accordingly, that portion of Record 19 qualifies for exemption under section 7(1). The remainder of Record 19 does not contain "advice" or "recommendations" and therefore does not qualify for exemption under section 7(1).

ISSUE C: If the records contain the personal information of the appellant and the answer to Issue B is yes, whether the discretionary exemption provided by section 38(a) of the Act applies.

Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves 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 right of access. One such exception is contained in section 38(a) of the Act which states:

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) gives the City discretion to deny access to an individual's own personal information if one of the specified exemptions would apply. In Issue A, I found that the records contain the personal information of the appellant. In Issue B, I found that the exemption in section 7(1) would apply to two passages in the records. Accordingly, these two passages are exempt from disclosure under section 38(a) of the Act.

As noted, section 38(a) is a discretionary exemption. I have reviewed the City's representations regarding its exercise of discretion to deny access under section 38(a). I find nothing to indicate that the exercise of discretion was improper and I would not alter it on appeal.

The two passages which are exempt from disclosure under section 38(a) of the Act are highlighted in the copies of Records 9 and 19 which are being forwarded to the City with this order.

ISSUE D: Whether the City conducted a reasonable search for responsive records.

The appellant claims that there are additional responsive records which the City has not identified.

Where a requester provides sufficient details about the records which he or she is seeking and the City indicates that additional records do not exist, it is my responsibility to ensure that the City has made a reasonable search to identify responsive records. While the Act does not require that the City prove to the degree of absolute certainty that such records do not exist, the search which the City undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

In its representations, the City indicates that the search was conducted by the Assistant City Solicitor and that he examined the files of the Insurance/Risk Management Division of the City's Finance Department as

well as the Legal Department's files. This information was provided in the form of a Statutory Declaration made under oath by the Assistant City Solicitor.

During the course of this appeal, the appellant has expressed the view that the City's response was deficient because it did not include records which address the Board of Control's consideration of whether the City would compensate him for damage to his compact disk player. It appears from the procedure outlined in Record 15 (a letter to the appellant, which was disclosed to him during mediation) that the recommendation ultimately acted on by the City regarding this matter was made first to the Board of Control, which then made its own recommendation to the Municipal Council.

In my view, any minutes or documents relating to the Board of Control's consideration of whether the appellant should be compensated for damage to his compact disk player would be responsive to part 1 of the clarified request. There is no indication in the City's representations that any search was done for records relating to the Board of Control's involvement.

The only record located by the City regarding part 2 of the clarified request (which relates to the Council meeting of May 17, 1993) was the council resolution dated May 18, 1993. There is no indication that the City Clerk's department, or any other area where minutes of the Council meeting in question might be stored, was included in the search.

I have carefully considered the representations and evidence submitted by the City regarding its search for records. In my view, the search conducted by the City for minutes or other records relating to the Municipal Council meeting of May 17, 1993, and for records relating to the Board of Control's decision regarding compensation for damages to the appellant's compact disk player, was not reasonable under the circumstances.

ORDER:

1. I uphold the City's decision to deny access to the portions of Records 9 and 19 which are highlighted on the copies of those records which accompany this order.
2. I order the City to release Records 8 and 12 in their entirety, and all of Records 9 and 19 **except** the portions which are highlighted on the copies of those records which accompany this order, within 15 days of the date of this order.
3. In order to verify compliance with this order, I order the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, **only** upon request.
4. I order the City to conduct a further search for minutes and other records relating to the consideration of the appellant's claim for compensation at the Municipal Council's meeting of May 17, 1993, and for minutes and other records relating to any consideration by the Board of Control

of the appellant's claim for compensation, and to notify the appellant in writing as to the results of that search, within 30 days of the date of this order.

5. If, as a result of the further search, the City identifies any records responsive to the request, I order the City to provide a decision letter to the appellant regarding access to these records in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
6. I order the City to provide me with a copy of the notification referred to in Provision 4 (and, if any records are discovered, a copy of the decision letter referred to in Provision 5) of this order within 35 days of the date of this order. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____

John Higgins
Inquiry Officer

_____ March 9, 1994