



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-340**

**Appeal M-9300420**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The City of Toronto (the City) received an application for a license to operate a boulevard cafe. Pursuant to certain procedures adopted by City Council, it conducted a poll of residents and property owners located within a 120 metre radius of the site of the proposed cafe seeking their views on the licence application. The appellant requested copies of the 147 ballots returned to the City by those residents and property owners who responded to the poll. The City denied access to the ballots, which comprise the records in this appeal.

The City relies on the following exemption to withhold the ballots:

- invasion of privacy - section 14(1)

A Notice of Inquiry was provided to the appellant and the City. Representations were received from the City only.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. In this case, a total of 137 ballots were returned by natural persons, as opposed to business or related entities. I find that each of these 137 ballots contain the personal information of identifiable individuals and, therefore, qualify as the personal information of these individuals. Further, 136 of these records contain the personal information of individuals other than the appellant. One of the ballots was returned by the appellant and the City has agreed to disclose to her a copy of her ballot.

In Order 16, former Commissioner Sidney B. Linden considered the question of whether the term "individual" might also include various business entities. He stated that:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear.

The information contained on the 10 ballots returned by the business entities includes the name of the business, its address, telephone number and the signature of the person who completed the ballot, along with a statement regarding its position on the proposed boulevard cafe. Following the logic outlined in Order 16, I find that this information does not relate to identifiable individuals within the meaning of section 2(1) of the Act.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information to any person other than the individual to whom the information relates,

except in certain circumstances. One such exception is outlined in section 14(1)(f) of the Act as follows:

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.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. Sections 14(2), (3) and (4) provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. The City has not claimed the application of any of the presumptions contained in section 14(3) of the Act and, following my review of the records, I agree that they are not applicable to the facts of this case. Nor do I find that any of the considerations listed in section 14(4) of the Act are applicable to this appeal.

The appellant has not raised any of the factors listed in section 14(2) of the Act or any other considerations which may weigh in favour of the disclosure of the records.

Having considered all of the circumstances arising in the appeal, I find that the disclosure of the personal information contained in the ballots returned by individuals would constitute an unjustified invasion of the personal privacy of these individuals and that the mandatory exemption in section 14 of the Act applies to this personal information.

**ORDER:**

1. I uphold the City's decision to deny access to the personal information contained in the 136 ballots returned by individuals other than the appellant.
2. I order the City to disclose to the appellant her own ballot, as well as the information contained in the 10 ballots returned by or on behalf of those entities which are not individuals, within thirty-five (35) days after 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 reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.
4. I have provided to the City's Freedom of Information and Privacy Co-ordinator a list of those ballots which relate to business entities which are to be disclosed.

**POSTSCRIPT:**

In order to address any concerns which may be raised in the future by parties who respond to surveys similar to that conducted by the City in this case, the City may wish to consider the inclusion of a notice provision in the ballot which alerts respondents who return ballots that the information contained therein is subject to both the privacy protection and the access to information provisions of the Municipal Freedom of Information and Protection of Privacy Act.

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

\_\_\_\_\_  
July 7, 1994