



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-361**

**Appeal M-9400148**

**Municipality of Metropolitan Toronto**



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>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant requested copies of all records containing her personal information in the custody or control of her employer, the Municipality of Metropolitan Toronto (the Municipality). The Municipality denied access to portions of the responsive records, relying on the following exemptions contained in the Act:

- advice or recommendations - section 7(1)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)

The requester appealed this decision to the Commissioner's office. A Notice of Inquiry was provided to the Municipality, the appellant and four employees who are referred to in the records. Representations were received from the Municipality, the appellant, and two of the employees. The remaining two employees advised the Commissioner's office that they consented to the release of their personal information, which is contained in pages 81 and 87 of the records. As no other exemptions have been claimed for this information, it should be disclosed to the appellant.

The records consist of handwritten notes made by the appellant's supervisors. Throughout this order I will refer to the records by the page numbers assigned by the Municipality.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

"Personal information" is defined in section 2(1) of the Act, in part, to mean recorded information about an identifiable individual, including the individual's name where 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.

In my view, all of the remaining information contained in the undisclosed portions of pages 81, 84, 88, 89 and 119 qualifies as personal information of the appellant **and** other identifiable individuals. The withheld portion of page 119 contains only the personal information of individuals other than the appellant. Further, I find that the undisclosed portions of pages 76, 78 and 85 contain only the personal information of the appellant and will be considered in my discussion of the application of section 38(a). It should be noted that the personal information found on page 119 is located in a different **record** from that of the other personal information at issue.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an

unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from disclosing this information.

In both situations, sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations which are relevant in the circumstances of the case.

I will first describe the positions of the parties with regard to those pages of the records which contain both the personal information of the appellant **and** other individuals.

The Municipality has claimed the application of section 38(b) of the Act to the undisclosed portions of pages 81, 84, 88 and 89. The Municipality and one of the employees submit that the information contained in the records was supplied to the Municipality in confidence (section 14(2)(h)).

In addition, another employee submits that disclosure of the information would expose him/her unfairly to pecuniary or other harm (section 14(2)(e)).

In her representations, the appellant states that disclosure of the information is desirable for the purpose of subjecting the activities of the Municipality to public scrutiny (section 14(2)(a)), that the information is unlikely to be accurate or reliable (section 14(2)(g)) and that the information is necessary to ensure a fair determination of her rights (section 14(2)(d)).

I will now address the positions of the parties with regard to page 119 of the records which contains only the personal information of individuals other than the appellant.

In its representations, the Municipality states that the information contained in page 119 relates to the eligibility of two identifiable individuals for social service or welfare benefits (section 14(3)(c)). Therefore, the Municipality submits that disclosure of the information on this page would represent a presumed unjustified invasion of personal privacy.

Having reviewed the evidence before me, I have made the following findings:

- (1) Sections 14(2)(a), (d), (e) and (g) are not relevant considerations with respect to any of the personal information at issue. Neither the appellant, the Municipality and the other individuals have provided sufficient evidence to support their positions concerning the application of these sections.
- (2) The two individuals whose personal information is still at issue in this appeal provided this information to the Municipality in confidence. Accordingly, section 14(2)(h) is a relevant consideration in this appeal with respect to the personal information found on pages 81, 84, 88 and 89.
- (3) Since section 14(2)(h) is the only relevant factor, and this consideration weighs in favour of privacy protection, the disclosure of the information highlighted on pages 81, 84, 88 and 89 would constitute an unjustified invasion of the personal privacy of the two other individuals.
- (4) Accordingly, the exemption in section 38(b) applies to the highlighted portions of pages 81, 84, 88 and 89 and the personal information should not be released.
- (5) The disclosure of the withheld portion of page 119 would reveal the names of welfare recipients and would, therefore, constitute a presumed unjustified invasion of the personal privacy of these individuals under section 14(3)(c).
- (6) None of the information contained in the undisclosed portion of page 119 falls within the ambit of section 14(4). Nor has the appellant submitted that section 16 of the Act applies to it. Accordingly, this information is properly exempt from disclosure under section 21(1) and must not be disclosed.

To summarize, I find that the information relating to the two individuals who have not consented to the disclosure of their personal information which is contained in pages 81, 84, 88 and 89 and the names of welfare recipients contained in page 119 of the records is exempt from disclosure.

### **ADVICE OR RECOMMENDATIONS**

The Municipality submits that the withheld portions of pages 76, 78, 85 and 103 qualify for exemption under section 7(1) of the Act.

This provision states that:

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.

I have reviewed these pages of the records and the representations submitted to me regarding the application of section 7(1) and I find that the undisclosed information contained in these pages qualifies for exemption under this section.

### **DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION**

Since I have found that pages 76, 78 and 85 contain the personal information of the appellant, I must consider the application of section 38(a) of the Act.

This provision gives the Municipality the discretion to disclose an individual's own personal information in situations where section 7(1) would otherwise apply. I have reviewed the representations of the Municipality on the exercise of its discretion in favour of not disclosing pages 76, 78 and 85 and find nothing improper in the manner in which this determination has been made.

### **ORDER:**

1. I uphold the Municipality's decision to deny access to those portions of pages 76, 78, 81, 84, 85, 88, 89, 103 and 119 which are highlighted in yellow on the copy of the records which I have forwarded to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Municipality to disclose to the appellant the personal information of the two individuals who consented to its disclosure, specifically, that portion of page 81 which is highlighted in blue and all of page 87 within fifteen (15) days of the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

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

\_\_\_\_\_  
July 28, 1994