



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-513

Appeal M-9500057

City of Etobicoke



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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 Etobicoke (the City) received a request for the name of the person who filed a complaint with the City alleging a violation of a by-law by the requester. The City located the name of the complainant, which was contained in a form entitled "Confidential Investigation Report", and refused to disclose it to the requester, relying on the following exemptions contained in the Act:

- law enforcement - section 8(1)(d)
- invasion of privacy - section 14

The requester appealed the City's decision to deny access to the complainant's name. A Notice of Inquiry was provided to the appellant and the City. As the record containing the name of the complainant also contains the personal information of the appellant, representations were sought from the parties on the application of sections 8(1)(d), 38(a) and 38(b) of the Act. Representations were received from the City only.

DISCUSSION:

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN PERSONAL INFORMATION

In order for information to qualify for exemption under section 8(1)(d), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act, which states:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The City submits that this matter relates to the enforcement of the City's by-laws and, therefore, qualifies under the definition of "law enforcement" outlined in clause (b). After reviewing the record which contains the name of the complainant and the representations of the parties, I agree that the records pertain to a law enforcement matter.

The City relies on section 8(1)(d) to exempt the name of the complainant from disclosure. This section states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

The appellant seeks access only to the name of the complainant. Thus, the sole issue to be determined in this appeal is whether the release of the name of the complainant would disclose the identity of a confidential source.

The City indicates that its by-law complaints process has traditionally guaranteed the confidentiality of complainants. This ensures that members of the public, on whom it relies to identify by-law infractions, will continue to do so, and that the disclosure of these names would deter others in future from complaining. The appellant states that he has a right to know the name of his accuser.

I find that the confidentiality of a complainant's name forms part of the City's by-law complaints process. As the names of complainants are treated with confidence by the City, the disclosure of the complainant's name would disclose the identity of a confidential source of information in a law enforcement matter, a possible violation of a City by-law. Accordingly, I find that the complainant's name qualifies for exemption under the section 8(1)(d) of the Act.

The record also contains the personal information of the appellant.

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 institutions covered by the Act. However, this right of access is not absolute. Section 38 of the Act provides a number of exceptions to this general right of access, including section 38(a) which reads as follows:

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) of the Act provides the City with the discretion to refuse to disclose an appellant's personal information where section 8 otherwise applies to the information. I have reviewed the factors considered by the City in the exercise of its discretion in favour of refusing to disclose the information to the appellant. I find nothing improper in the determination which has been made with respect to the name of the complainant and would not alter it on appeal.

ORDER:

I uphold the decision of the City to deny access to the name of the complainant.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ April 27, 1995