



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

ORDER M-570

Appeal M-9500255

City of 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/Télé: 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 City of Toronto (the City) received a request for access to a copy of a letter addressed to a named City Councillor relating to "issues of lease negotiations between the Toronto Island Residential Community Trust and [the] City Parks Department". The record at issue is a one page unsigned letter. The City relies on the following exemption in denying access to the record:

- invasion of privacy - section 14.

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

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an **identifiable** individual.

The City submits that, while the letter is unsigned, its author is identifiable by both its form and content.

In Order P-230, Commissioner Tom Wright stated that the provisions of the Act relating to the protection of personal privacy should not be read in a restrictive manner. He indicated that, if there exists a reasonable expectation that the individual can be identified from information contained in a record, then such information qualifies as personal information under section 2(1) of the Act.

Following a careful review of the unique facts of this appeal, I find that it is reasonable to expect that the author of the letter could be identified should the letter be disclosed to the appellant. I find, as well, that the record contains recorded information about this identifiable individual and it qualifies, therefore, as personal information for the purposes of section 2(1) of the Act.

Section 14(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 14(1)(f) of the Act. This section requires the City to refuse to disclose the personal information except if the disclosure does not constitute an unjustified invasion of personal privacy.

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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of privacy.

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 that are relevant in the circumstances of the case.

The City relies upon the following factors found in section 14(2) of the Act:

- the personal information is highly sensitive (section 14(2)(f))
- the personal information has been supplied by the individual to whom the information relates in confidence (section 14(2)(h))

The appellant does not make reference to any of the considerations listed in section 14(2). Rather, she states that there exists a compelling public interest in the disclosure of the record pursuant to section 16 of the Act. This provision states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

Section 16 has two requirements which must be satisfied in order to invoke the application of the so-called "public interest override", there must be a **compelling** public interest in disclosure, and this compelling public interest must **clearly** outweigh the **purpose** of the exemption, as distinct from the value of disclosure of the particular record in question (Order M-24).

In undertaking this analysis, I am mindful of the fact that section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

The appellant represents a group which is currently involved in negotiations with the City. It is her view that receipt of the letter by the City dramatically changed the tenor of the negotiations and, therefore, there is public interest in the disclosure of the record. The group represented by the appellant wishes to refute or rebut any arguments or misinformation put forth in the letter and determine if there is any conflict of interest involving its author.

Having reviewed the representations and the record, I have made the following findings:

- (1) The personal information contained in the record is highly sensitive and was supplied by the individual to whom it relates in confidence. Therefore, the considerations found in sections 14(2)(f) and (h) of the Act apply in the circumstances of this appeal.
- (2) I find that there are no factors found in section 14(2) which would favour disclosure of the record at issue in this case.
- (3) None of the personal information contained in the record falls under section 14(4).

- (4) There does not exist a **compelling** public interest in the disclosure of the personal information which would **clearly** outweigh the purpose of the section 14 exemption, which is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. Accordingly, I find that section 16 of the Act does not apply.
- (5) I find that the disclosure of the personal information in the record at issue would constitute an unjustified invasion of the personal privacy of its author and that the record is exempt from disclosure under section 14 of the Act.

ORDER:

I uphold the City's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ July 18, 1995