



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

ORDER M-707

Appeal M_9500599

City of Kingston



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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 Kingston (the City) received a request from an individual for access to all information in his general welfare assistance file. The request was made on behalf of the individual by his counsel.

The City granted the requester partial access to the records, but denied access to two pages and parts of two other pages on the basis of sections 14(1) and 38(b) of the Act (invasion of privacy).

The requester appealed the City's decision to withhold a portion of the information on one page of the records (Record 7) pursuant to section 38(b). Following receipt of the Confirmation of Appeal, the City issued a revised decision letter in which it claimed that, in addition to section 38(b), the exemptions in sections 8(1)(d) and 38(a) (law enforcement and discretion to refuse requester's own information, respectively) apply to Record 7.

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

The only information at issue consists of the undisclosed portion of Record 7. This record is titled "File Notes". It consists of notes taken by individuals in the City's social services department concerning the appellant's claim for social assistance. The appellant received the majority of this record, with the exception of one paragraph which contains information received from an identified individual (the informant). Both the information and the identity of the informant were withheld from disclosure.

PRELIMINARY MATTER:

NOTIFICATION OF AFFECTED PERSON

The appellant submits that the primary issue in this appeal is whether the City should have notified the informant prior to issuing a decision on access to determine whether this individual would have consented to disclosure of his or her personal information.

Section 21 of the Act sets out the procedures to be followed by an institution in notifying affected persons regarding an access request. The pertinent part of this section provides:

- (1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates **before granting a request for access to a record,**
 - (a) that the head has reason to believe might contain information referred to in subsection 10(1) that affects the interest of a person other than the person requesting information; or

- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14(1)(f). (emphasis added)

The City indicates in its representations that it was aware that, at the time the information was provided, the informant had requested confidentiality. At the time of its original decision, the City did not intend to disclose the information which would identify the informant because, in its view, that would constitute an unjustified invasion of personal privacy. In the circumstances of the appeal, the City's decision not to seek the consent was in accordance with section 21 of the Act.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

Under section 2(1) of the Act, "personal information" is defined, 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.

The portion of the record which is at issue consists of information about the appellant which has been provided by another individual. The City submits, and I agree, that the record contains the appellant's personal information. In this case, because of the context in which the information was provided, I find that the record at issue also contains the personal information of the informant.

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(a) of the Act, the City has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The exemptions listed in section 38(a) include the law enforcement exemption provided by section 8. The City claims that the withheld portion of Record 7 is exempt under section 8(1)(d), which 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.

Deciding whether a record qualifies for exemption under this section is a preliminary step in determining whether the exemption in section 38(a) applies.

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

"Law enforcement" is defined in section 2(1) of the Act as:

- (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 the information at issue under section 8(1)(d) relates to an investigation conducted by an Enhanced Verification Worker (the EVW) regarding the appellant's eligibility for assistance. As a result of such an investigation, sanctions may be imposed in the form of an assessment of overpayment or the withholding of benefits. The appellant confirms that his social assistance was cancelled. These decisions are reviewable by the Social Assistance Review Board which may also impose sanctions. In these circumstances, I find that the information at issue under section 8(1)(d) relates to a law enforcement matter.

As I indicated above, the information at issue identifies an individual who provided information to the City which led to the assignment of an EVW to the appellant's case in order to closely examine all information received from the appellant regarding eligibility for assistance. The City outlines the circumstances under which the information was provided and indicates that the informant expressly requested anonymity. The City submits that disclosure of the information would identify the source.

The City argues that, apart from a concern for possible repercussions against the informant should the information be disclosed, the social services department's ability to investigate complaints would be compromised should it not be able to keep the identity of informants confidential.

Based on the submissions of the City, I find that disclosure of the withheld portion of Record 7 could reasonably be expected to disclose the identity of the confidential source and thus this information qualifies for exemption under section 8(1)(d) of the Act.

Having found that these pages contain the personal information of the appellant and qualify for exemption under section 8(1)(d), I find that they are exempt from disclosure under section 38(a).

Because of the findings I have made regarding sections 8(1)(d) and 38(a), it is not necessary for me to consider the possible application of section 38(b).

ORDER:

I uphold the City's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 12, 1996