



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

# **ORDER M-688**

**Appeal M\_9500281**

**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/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to the requester including notes, memoranda and journals of the requester's visits with a counsellor. The City granted partial access to the responsive records. The requester appealed the decision to deny access to the remaining records.

The requester, now the appellant, is a former employee of the City. The records were generated during the process of rehabilitation undertaken by the appellant. During mediation, the appellant clarified that an additional record, a letter from an Employee Assistant Services staff to the Parks Manager containing a summary of the appellant's rehabilitation program, should exist. Particulars of this letter were provided to the City to effect a search.

The City relied on the following exemptions to deny access to parts of four pages of a counsellor's notes (Records 6, 8, 9 and 12) and part of a one-page letter from a hospital (Record 28):

- evaluative or opinion material - section 38(c)
- danger to mental or physical health of requester - section 38(d)
- third party information - sections 10(1)(a) and (c)

A Notice of Inquiry was provided to the appellant, the City, the hospital and several doctors identified in the records (the doctors). The reasonableness of the City's search for the additional record was also listed as an issue in the Notice of Inquiry. Representations were received from the City.

In its representations, the City indicated that it was no longer relying on section 38(c) of the Act in respect of Records 6, 8, 9 and 12. The City also advised that no representations were being made in respect of Record 28, for which it had previously claimed sections 10(1)(a) and (c).

The City has also advised this office that the additional record which the appellant believes to exist has, in fact, already been disclosed to the him. The City indicates that Record 14 is a letter from a named Employee Assistant Services staff to the Parks Manager attached to which is a report identified as Records 16, 17, 18 and 19. The City states that Records 14, 16, 17, 18 and 19 were part of the records disclosed to the appellant with its decision letter dated February 9, 1995. In order to avoid any confusion, I will order the City to provide the appellant with a further copy of the records. As a result, I do not need to address the reasonableness of the City's search for responsive records.

**DISCUSSION:**  
**DANGER TO MENTAL OR PHYSICAL HEALTH OF REQUESTER**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including the views or opinions of another individual about the individual and the individual’s name if it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual.

I find that the withheld portion of Record 28 does not contain personal information. The City has withdrawn its claim to sections 10(1)(a) and (c) of the Act and I agree with the City that these sections have no application to the records. The City has not claimed any discretionary exemption in respect of this record. Therefore, Record 28 should be disclosed to the appellant.

I have reviewed the withheld portions of Records 6, 8, 9 and 12 and I find that they contain the personal information of the appellant. While there are references to other identifiable individuals in the records, these appear in the context of the individuals’ professional or employment capacity and therefore, do not qualify as the personal information of these individuals.

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(d) of the Act, the City has the discretion to deny the requester access to his/her own personal information if that personal information is medical information, which if disclosed, could reasonably be expected to prejudice the mental or physical health of the requester.

The medical information in Records 6, 8, 9 and 12 relates to notes of consultations about the appellant between a counsellor and named doctors. The City submits that the notes form part of the counselling provided to the appellant.

Section 38(d) requires that the disclosure of medical information **could reasonably be expected to** prejudice the mental or physical health of the individual. The City submits that the only parties who can determine prejudice to the mental or physical health of the appellant are the doctors who provided the information to the counsellor. The City’s representations do not contain any evidence of the mental or physical harm that could reasonably be expected to result from disclosure nor do they contain any related information from the doctors.

As I have indicated previously, the doctors were notified by this office and requested to make submissions on this matter. No representations were received from the doctors.

In my view, the City has not demonstrated how the disclosure of the appellant’s medical information to him could reasonably be expected to prejudice the mental or physical health of that individual. Accordingly, I find that the withheld portions of Records 6, 8, 9 and 12 do not qualify for exemption under section 38(d) of the Act.

**ORDER:**

1. I order the City to disclose the withheld portions (i.e. the remaining parts) of Records 6, 8, 9, 12 and 28 to the appellant by February 16, 1996 but not before February 11, 1996.
2. I order the City to disclose Records 14, 16, 17, 18 and 19 in their entirety to the appellant by February 16, 1996 but not before February 11, 1996.
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 Provisions 1 and 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ January 12, 1996