



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

ORDER M-738

Appeal M_9500714

City of London



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NATURE OF THE APPEAL:

The City of London (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information related to a notice of contravention of a City by-law received by the requester. Specifically, the requester sought access to the by-law, reports and notes on the investigation and information about the complainant and the City's internal by-law enforcement policy. The City granted access to the majority of the records responsive to the request. Access was denied to the name, address and telephone number of the complainant contained in Records 1 and 2, as described in Table 1 provided by the City to the requester. The requester appealed the decision to deny access to this information.

The City denies access to the records on the basis that disclosure could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding (section 8(1)(b)) or disclose the identity of a confidential source of information in respect of a law enforcement matter (section 8(1)(d)).

A Notice of Inquiry was provided by this office to the appellant and the City. The information at issue may also contain the personal information of the appellant and accordingly, representations were sought from the parties on the application of section 38(a) of the Act. Representations were received from both parties.

DISCUSSION:

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

Previous orders of the Commissioner have determined that an institution's process of by-law enforcement qualifies as "law enforcement" for the purposes of section 2(1) of the Act (Orders M-16 and M-582). I agree with the reasoning in those orders and adopt the findings for the purposes of this appeal.

The records relate to an alleged infraction of a municipal zoning by-law and I find, therefore, that they relate to a law enforcement matter.

The City has claimed sections 8(1)(b) and (d) to deny access to the records. I will first look at the application of section 8(1)(d) of the Act. 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 information at issue is the name, address and telephone number of the complainant. The City submits that it has a complaint-generated by-law enforcement system and that there is a reasonable expectation of confidentiality within this process. The City states that it has always held complainants' names in confidence.

The appellant submits that he is entitled to receive the information sought because the complaint was made against him. The appellant states that if complainants are prepared to file complaints, then they should be prepared to have their identity disclosed. The appellant submits that withholding this information is similar to the withholding of evidence in a court of law.

I have reviewed the records together with the representations of the parties. I find that the confidentiality of a complainant's name, address and telephone number forms part of the City's by-law complaints process. As this type of information is treated with confidence by the City, the disclosure of the complainant's name, address and telephone number would disclose the identity of a confidential source of information in a law enforcement matter, a violation of a municipal by-law. Accordingly, I find that the complainant's name, address and telephone number fit within the parameters of the section 8(1)(d) exemption.

I find that the records also contain recorded information relating to the appellant and therefore constitutes the personal information of the appellant under section 2(1) of the Act.

Section 36 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 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 regarding its exercise of discretion in favour of refusing to disclose the record to the appellant. I find nothing improper in the determination which has been made with respect to the name, address and telephone number of the complainant and would not alter it on appeal.

I have found that the information qualifies for exemption under section 8(1)(d) and therefore, section 38(a) applies. Because I have found the records to be exempt under section 8(1)(d), I do not need to consider the application of section 8(1)(b) of the Act.

ORDER:

I uphold the decision of the City.

Original signed by: _____ March 20, 1996
Mumtaz Jiwan
Inquiry Officer