



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

# ORDER M-721

Appeal M\_9500641

City of Toronto



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## 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 the draft versions of a report prepared by the City Auditor which was presented to City Council on August 12, 1991. The request was made on behalf of a local newspaper. The City located the responsive record and denied access to it, claiming the application of the following exemptions contained in the Act:

- advice or recommendations - section 7(1)
- economic and other interests - sections 11(c), (d) and (f)
- solicitor-client privilege - section 12
- invasion of privacy - section 14(1)

The requester (now the appellant) appealed the City's decision. A Notice of Inquiry was provided to the appellant, the City and to three individuals whose rights might be affected by the disclosure of the record (the affected persons). Representations were received from the appellant, the City and two of the affected persons, one of whom consented to the disclosure of the record to the appellant. The City indicates that it is no longer relying on the exemptions provided by sections 7(1), 11(c), (d) and (f) and section 12 and it agrees to disclose to the appellant all of the subject record with the exception of pages 12 to 15 inclusive. The appellant raises the possible application of section 16 of the Act to the information contained in the record at issue.

## PRELIMINARY ISSUE:

On two occasions following the issuance of the Notice of Inquiry and again in his representations, the appellant submits that his ability to make meaningful submissions has been severely prejudiced by the lack of an index or other information from the City as to the contents of the record and details as to how the exemptions which have been claimed apply to it. The record at issue is a draft of a report which the appellant has seen in its final form. This is not, in my view, a situation where, because of multiple records and exemptions being claimed, the requester is unable to determine the nature of the record or the information which it contains.

The appellant clearly understands the nature of the record and, in general, the type of information which it contains. I find, therefore, that the appellant has not been prejudiced by not receiving either an index or a more detailed explanation of the contents of the record at issue. To have supplied more details about the contents of the record, the City would have risked disclosing the very information to which it had applied the section 14(1) exemption.

## 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 including "the views or opinions of another

individual about the individual”. I have reviewed the record and the representations from the parties on this issue and find that the remaining portions of the record, pages 12 to 15 inclusive, contain the personal information of the three affected persons. The record contains the opinions of the City Auditor about the job performance of the former General Manager of Land Development, the City Solicitor and former Commissioner of Housing. This information, therefore, qualifies as the personal information of these three individuals.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies.

As the former General Manager of Land Development has consented to the disclosure of his own personal information, the exception in section 14(1)(a) applies to this portion of the record. The personal information of the General Manager should, accordingly, be disclosed to the appellant.

The only other exception which might apply to the remaining information is section 14(1)(f) which permits disclosure if it “... does not constitute an unjustified invasion of personal privacy”.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions in section 14(3) apply, the City must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances which are relevant in the circumstances of this appeal.

The City and one affected party submit that the information remaining at issue qualifies as the “employment history” of the City Solicitor and former Commissioner of Housing within the meaning of section 14(3)(d). In addition, they argue that the information represents a “personal evaluation” of these affected parties by the City Auditor and therefore falls within the section 14(3)(g) presumption. Finally, the City states that the record does not describe the “employment responsibilities” of the affected persons, but rather “their performance of their employment responsibilities” and, therefore, the exception provided by section 14(4)(a) does not apply.

The City also submits that several of the factors weighing against the disclosure of personal information contained in section 14(2) are relevant in the circumstances of this appeal. These include the fact that the information is highly sensitive (section 14(2)(f)) and that the disclosure of the information would unfairly damage the reputation of the individuals mentioned in the record (section 14(2)(i)).

The affected person indicates that he would be unfairly exposed to pecuniary or other harm should the record be disclosed (section 14(2)(e)), that the information is highly sensitive (section 14(2)(f)), that the personal information is inaccurate (section 14(2)(g)), that his reputation would be damaged by the disclosure of the record (section 14(2)(i)) and that the record contains

information which “casts unwarranted aspersions on my actions and abilities in carrying out my employment responsibilities”.

The appellant submits that because the record involves a review of the performance of City employees in relation to a large property development, it cannot be considered to be “highly sensitive” within the meaning of section 14(2)(f).

I have reviewed the remaining portion of the record at issue and the representations of the parties and make the following findings:

1. In Order P-348, Assistant Commissioner Tom Mitchinson found that a record which reviews and makes recommendations about the job performance of individuals falls within the definition of a “personal evaluation” within the meaning of section 21(3)(g), the equivalent provision to section 14(3)(g) contained in the Freedom of Information and Protection of Privacy Act.

I find that those portions of the record on pages 13 and 14 relating to the City Solicitor and the former Housing Commissioner contain personal information which satisfies the requirements of section 14(3)(g). This portion of the record reviews and makes recommendations about the job performance of these two identifiable individuals. Accordingly, I find that the disclosure of this information would result in a presumed unjustified invasion of personal privacy.

2. The presumption contained in section 14(3)(d) relating to employment history has no application to the undisclosed information at issue. I find that the comments of the City Auditor about the job performance of the City Solicitor and the former Housing Commissioner cannot be characterized as “employment history” within the meaning of the Act.
3. The information which remains undisclosed on pages 13 and 14 of the record does not fall within section 14(4) of the Act and is, accordingly, exempt from disclosure under section 14(1).
4. I have highlighted on the copy of pages 13 and 14 of the record which I have provided to the City’s Freedom of Information and Privacy Co-ordinator with a copy of this order the information which is exempt from disclosure under section 14(1).

## **PUBLIC INTEREST IN DISCLOSURE**

Section 16 of the Act 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. (my emphasis)

In Order P-984, Inquiry Officer Holly Big Canoe examined the component parts of section 23 of the provincial Act, which is the equivalent of section 16 of the municipal Act. She held that:

There are two requirements contained in section 23 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.

The appellant submits that:

The public's "compelling interest" in having access to information regarding projects and partnerships between the City of Toronto and the private sector and the conduct of City officials is self-evident. We submit that this section was enacted precisely with the intention to provide the disclosure of documents such as those requested in the present submission.

The appellant has also included in his representations a large number of newspaper clippings which, he submits, demonstrate a compelling public interest in the disclosure of information about the development project which resulted in the City Auditor's investigation.

I cannot agree, however, that the public interest in the disclosure of the remaining personal information contained in the record is sufficiently compelling so as to clearly outweigh the privacy protection provisions of section 14(1). In my view, as a result of this appeal, the appellant will receive a sufficient degree of disclosure to ensure that the public's ability to scrutinize the activities of the governmental institutions involved in this matter has been met. The privacy protection afforded to the affected persons by section 14(1) will not stand in the way of a public examination of the manner in which the City Auditor investigated the job performance of the affected persons.

#### ORDER:

1. I order the City to disclose to the appellant the record at issue, with the exception of those portions which I have highlighted on the copy of pages 13 and 14 provided to the City's Freedom of Information and Privacy Co-ordinator, by sending him a copy by **April 9, 1996** but not before **April 4, 1996**.
2. I uphold the City's decision to deny access to the highlighted portions of pages 13 and 14 of the record.
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 record which is disclosed to the appellant in accordance with Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale

\_\_\_\_\_  
March 4, 1996

Inquiry Officer