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

ORDER M-722

Appeal M_9500533

City of Toronto

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NATURE OF THE APPEAL:

The appellant is a tenant at a residential property which was the subject of inspections and orders by the City of Toronto's Department of Buildings and Inspections. He submitted a request to the City of Toronto (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for a copy of a work order and inspection notes pertaining to his place of residence for a particular date, and for information about several other work orders which, according to the request, should have been sent to the appellant.

He also asked that previous work orders, compliance reports and similar records be corrected by including his name (spelled correctly), and that a note be attached to the file with regard to other tenants who were not named on these documents. In subsequent correspondence with the City, the appellant enclosed a statement of disagreement about the references (or lack thereof) to other tenants, and asked that it be attached to the City's Buildings and Inspections file regarding the property.

Initially, the City responded to this request with a fee estimate. The appellant filed an appeal.

Subsequently, the City withdrew its request for a fee and issued a new decision letter, whose provisions I will now summarize.

With respect to the appellant's request for access, the City granted access to the vast majority of the information in the requested records. A small number of pages were fully withheld, and parts of others were also withheld. The City denied access to all of the withheld information under the exemption provided by section 14(1) of the Act (invasion of privacy).

As to the correction request, the City indicated that past orders previously submitted for enforcement could not be changed to correct the spelling of the appellant's name, but that a note had been attached to the Building and Inspection Department's active files to ensure his name is correctly spelled on any future orders. With respect to the information about other tenants, the City again indicated that corrections could not be made to orders submitted for enforcement, but that the statement of disagreement would be attached to all active files.

This office sent a Notice of Inquiry to the appellant and the City. The outstanding issues in this appeal, as outlined in the Notice of Inquiry, are whether the withheld portions of the records are exempt under section 14(1) and whether the City's response to the correction request is in accordance with the provisions of section 36(2) of the Act.

For any records which I find to contain the personal information of the appellant, I will also consider whether section 38(b) of the Act applies. This section provides a discretionary exemption for records which contain a requester's own personal information, where disclosure would constitute an unjustified invasion of someone else's personal privacy.

In response to the Notice of Inquiry, only the City submitted representations.

The records at issue consist of the undisclosed parts of an order to comply, a letter to the property owners, inspectors' notes and attachments, and several work orders.

INVASION OF PRIVACY

Section 2(1) of the Act provides, in part, that "personal information" means recorded information about an identifiable individual. I have reviewed the records to determine whether they contain personal information, and if so, to whom the personal information relates.

I find that all of the records at issue contain personal information pertaining to the owners, because they identify these individuals as such, and disclose other information of a personal nature about them. One of the records also contains the names of tenants (other than the appellant), identifying them as such. I find that these references constitute the other tenants' personal information.

Several of the records also contain references to the appellant, which constitute his personal information. These references were all disclosed, but they are relevant to the issue of which "invasion of privacy" exemption (section 14(1) or section 38(b)) should be considered regarding each particular record.

Once a record is found to contain personal information, section 14(1) of the Act provides that this information shall not be disclosed unless one of the exceptions listed in section 14(1) apply. The only such exception which could apply here is section 14(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

However, where a record contains the appellant's personal information and the City decides not to disclose all or part of the record to prevent an unjustified invasion of someone else's privacy, section 14 does not apply (Order M-352). In such a case, section 38(b) gives the City the discretion to deny access where disclosure would be an unjustified invasion of privacy.

Therefore, for the records which contain the appellant's personal information, I will decide whether section 38(b) applies. For the other records, I will decide whether section 14(1) applies.

In both these situations, 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. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where 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 contained in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

Sections 14(3)(a) and (b) provide as follows:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

Some of the withheld information discloses part of an individual's medical history. I find that the presumption in section 14(3)(a) applies to that information. In addition, I find that the records were compiled, and are identifiable, as part of an investigation into a possible violation of law (in particular, the Building Code Act and/or the Building Code), and for this reason, the presumption in section 14(3)(b) applies to **all** of the undisclosed information. On this basis, I find that disclosure of the withheld information **would** constitute an unjustified invasion of the privacy of individuals other than the appellant.

I find that sections 14(4) and 16 do not apply to the withheld information, which is therefore exempt under sections 14(1) and 38(b).

CORRECTION REQUEST

Sections 36(2)(a) and (b) of the Act provide for correction requests and statements of disagreement relating to one's own personal information. These sections state:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information if the individual believes there is an error or omission;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made.

Section 36(1) of the Act sets out the right of individuals to obtain access to their own personal information.

Section 36 relates to the rights of individuals to obtain, and request corrections to, **their own** personal information. On this basis, it is my view that section 36(2) does not give the appellant the right to require the City to change or add information pertaining to **other tenants**, nor to require the City to attach a statement of disagreement in that regard. In my view, this disposes of any issues regarding the City's response to that part of the appellant's request.

This leaves the issue of whether the City is obliged to correct the appellant's name on work orders, orders to comply and similar records created prior to the appellant's request, or to add his name where it has been omitted from such records.

The City states that, as all previous work orders, orders to comply and similar records relating to this property have been served on the owners of the property and/or filed with the court during enforcement proceedings, it would not be appropriate for the City to change its copies of these records. I agree. Under these circumstances, I find that it would not be reasonable to require the City to correct the spelling of the appellant's name on such records, nor to add it to the records from which it has been omitted. I uphold the City's decision to refuse this correction under section 36(2)(a).

Under section 36(2)(b) of the Act, however, it would be open to the appellant to request that the City attach a statement of disagreement about the spelling of his name, and the fact that he was a tenant, to its copies of the relevant records. These items were not addressed in the statement of disagreement previously filed by the appellant.

ORDER:

I uphold the City's decision.

Original signed by: March 4, 1996
John Higgins
Inquiry Officer