



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

# **ORDER M-791**

**Appeal M\_9600067**

**City of Timmins**



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## **NATURE OF THE APPEAL:**

The City of Timmins (the City) received a request under the Municipal Freedom of Information and Protection Act (the Act) for access to certain documents related to complaints concerning Building Code and By-law violations by a named individual (the affected person). The requester is the individual who filed the complaints. The City identified five records as being responsive to the request and denied access to them in their entirety on the basis of the following exemption in the Act:

- invasion of privacy - section 14(1)

The requester (now the appellant) filed an appeal of the decision of the City to deny access to the following four records:

- (1) A letter from the City's Municipal Law Enforcement Officer (the officer) to the affected person dated September 28, 1995;
- (2) The officer's notes dated October 13, 1995;
- (3) A letter from the officer to the affected person's lawyer dated October 26, 1995; and
- (4) A letter from the officer to the affected person dated December 11, 1995.

The appellant also raised the application of section 16 of the Act, the so-called "public interest override".

This office sent a Notice of Inquiry to the City, the appellant and the affected person. Representations were received from all three parties.

## **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 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.

In his submissions, the appellant states that he is not interested in receiving access to such information as the affected person's name, address and telephone. The appellant is already aware of this information as he was the individual who complained about the affected person's property. The appellant maintains that once this information is removed from the records, the

remaining information cannot be said to be “personal” to the affected person. Rather, he states that it is about the affected person’s property.

I disagree. First of all, I find that the fact of being identified as responsible for the alleged unlawful condition of property is “other personal information” for the purposes of the definition in Act. Furthermore, it is clear that even if the name, address and telephone number of the affected person are removed from the records, this individual is still “identifiable” in the sense that the affected person can be identified from the remaining information. Accordingly, I find that the records contain the personal information of the affected person. They do not contain any personal information of the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 against disclosure 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 that are relevant in the circumstances of the case.

The City submits that the personal information falls within the presumption set out in section 14(3)(b) of the Act which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

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;

The City has explained that the records relate to the City’s investigation of the alleged by-law violations and its efforts to have the affected person comply with same. I agree with the City’s characterization of the records and find that all of the personal information of the affected person falls within the section 14(3)(b) presumption. None of the information falls within the ambit of section 14(4).

The appellant submits that the records should be disclosed pursuant to section 16 of the Act which 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 (emphasis added).

It has been stated in a number of previous orders that, in order to satisfy the requirements of this section, 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 there is a public interest in disclosure of the records as he maintains that the City has failed to take proper and timely actions in response to his complaints. Moreover, he submits that some of the activities being undertaken by the affected person are illegal and dangerous and must be terminated in the interests of public safety.

I have carefully reviewed the records as well as some background documentation describing the City's contact with the appellant with respect to this matter. The appellant has been provided with a copy of the Notice of Violation with respect to the affected person's property. A report dated January 11, 1996, prepared for the Mayor and Council in response to the appellant's complaints, indicates that City officials also met with the appellant. At this meeting, City officials explained the results of the City's inspection of the affected person's property, its conclusions and the position taken by the City with respect to the work to be done.

Based on the above, I do not find that there is a compelling public interest in disclosure of the records which clearly outweighs the personal privacy exemption in section 14(1) of the Act. Whatever "public" as opposed to "private" interest may exist in this matter has been satisfied by the information previously conveyed to the appellant.

**ORDER:**

I uphold the decision of the City.

Original signed by: \_\_\_\_\_

Anita Fineberg

Inquiry Officer

\_\_\_\_\_ June 18, 1996