



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

# **ORDER M-808**

**Appeal M\_9600069**

**Town of Markham**



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## **NATURE OF THE APPEAL:**

The appellant requested information from the Town of Markham (the Town) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The information concerned a complaint about the use of the appellant's property made by a named individual to the Town, as well as all information the Town allegedly provided to the Regional Assessment Office in Aurora about the complaint.

In its decision letter the Town indicated that the requested information related to a by-law enforcement report and would not be released. The Town claimed section 8 (law enforcement) of the Act as the basis for denying access to the information.

The appellant appealed the decision. During mediation, and pursuant to section 18 of the Act, the Town transferred that portion of the request related to the Regional Assessment Office in Aurora to the Assessment Commissioner in Aurora. The appellant did not object to the transfer. The Town also released three records to the appellant. As a result of this disclosure, the records remaining at issue are:

- (1) a two-page Inspection Report of the appellant's property; and
- (2) a two-page memorandum dated April 1, 1992 from a Town solicitor to a Regional Councillor related to a letter received from the appellant.

This office sent a Notice of Inquiry to the Town and the appellant. Because the records appeared to contain the personal information of the appellant and the named individual, the Notice raised the possible application of sections 38(a) and (b) of the Act. Section 38(a) gives the Town the discretion to refuse to disclose to the appellant his own personal information if certain other exemptions, including section 8 apply. Section 38(b) provides the Town with the discretion to refuse to disclose this information if to do so would constitute an unjustified invasion of another individual's personal privacy.

As a current address for the named individual could not be located, this individual was not notified.

No representations were received from either the Town or the appellant. In such cases, it is my responsibility, in keeping with the inherent obligation of this office to ensure the integrity of Ontario's access and privacy protection scheme, to conduct an independent review of the record to determine whether it is necessary to consider the application of the provisions of the Act relating to protection of personal privacy. In the circumstances of this case, having reviewed the record, I feel that the provisions of the Act relating to a requester's right of access to his/her own personal information and those relating to the protection of personal privacy of other individuals should be considered. In my view, the information contained in the record is sufficient to trigger the consideration of these provisions. However, as section 8 is a discretionary exemption, I will not consider its application in this order.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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.

I have reviewed the records to determine if they contain personal information and, if so, to whom the information relates. The records contain several references to Town employees in their professional capacities. These references do not constitute the personal information of these individuals. Both documents do contain the personal information of the appellant in that they describe interactions between the Town and the appellant. The records also contain the personal information of the named individual outlining the nature of the complaint and other matters.

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(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the institution has the discretion to deny the requester access to that information.

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.

Having reviewed the records, I am of the view that the presumption in section 14(3)(b) applies to some of the information at issue. This section of the Act reads:

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;

As stated, the records relate to the investigation undertaken by the Town in response to the complaint about the use of the appellant's property. The Town was trying to determine if the use was in violation of a municipal by-law. Accordingly, I find that the references to the named individual were compiled as part of the Town's investigation into a possible violation of law and are subject to the presumption in section 14(3)(b). They are therefore exempt from disclosure pursuant to section 38(b) of the Act.

However, once these references are removed, the records contain solely the personal information of the appellant and section 38(b) cannot apply. As I have indicated, the Town has not provided any representations and no mandatory exemptions apply to this information.

I have highlighted the personal information of the named individual on the copies of the records I have provided to the Freedom of Information and Privacy Co-ordinator of the Town with this order. This information should not be disclosed to the appellant.

**ORDER:**

1. I order the Town to disclose Records 1 and 2 to the appellant with the exception of those portions which I have highlighted on the copies provided to the Freedom of Information and Privacy Co-ordinator of the Town with this order.
2. I order the Town to disclose the non-highlighted portions of Records 1 and 2 to the appellant by sending him a copy by **August 8, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ July 19, 1996