



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

ORDER M-886

Appeal M_9600288

Township of Thurlow



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NATURE OF THE APPEAL:

The Township of Thurlow (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for all documents entitled “Application to Manage and Conduct a Bingo Lottery” and “Bingo Lottery Report” and any documents filed by or on behalf of a named bingo hall between January 1, 1992 and December 31, 1994, in which the name of a specific individual (the affected person) appears.

Pursuant to section 21 of the Act, the Township contacted the affected person who declined to consent to the disclosure of the requested information.

The Township then issued a decision in which it denied access to the records in their entirety on the basis of the following exemptions contained in the Act:

- third party information - section 10
- invasion of privacy - section 14

The requester (now the appellant) appealed the Township’s decision.

The records consist of multiple copies of the forms listed below, completed and submitted on various dates. During the course of mediation, the appellant narrowed the scope of the appeal to include only the following information:

Application to Manage and Conduct a Bingo Lottery (Form 06002(85)):

- name of the organization (applicant)
- paragraph 1- all information contained therein, with the exception of the starting and finishing times and the days of the week on which the lotteries are to be held
- paragraph 8 - the name of the premises only
 - paragraph 9 - the name of the organization (applicant); and the signature, name in full and title, only if they relate to the affected person
- paragraph 13 - the signature, only if it is that of the affected person
- Certificate - name of the organization (applicant); and the name at the top and the signature, name in full and title, only if they relate to the affected person

Application to Manage and Conduct a Bingo Lottery (Form 06002(02/87)):

This form contains an additional paragraph (paragraph 7 - “Is this organization presently running bingo events?”) to the form above. The information in this paragraph is not sought by the appellant. Otherwise, the information remaining at issue in Form 06002(85) and described above also applies to this form, although the paragraph numbering from paragraphs 7 to 14 differs between the two forms.

Bingo Lottery Report:

- name of the organization; premises utilized; date of bingo; and designated member in charge, only if it is the affected person
- section entitled, "To be completed by Designated Members" - the name in full, title and signature, only if they relate to the affected person
- Certificate - the name in full, title and signature, only if they relate to the affected person

Supplementary Super Jackpot Report:

- item #1 - Name of SJP Assoc
- item #2 - Name of Organization
- item #3 - Premises Utilized
- item #4 - Date of Bingo Event
- name and signature at the bottom of the form, only if they relate to the affected person

A Notice of Inquiry was sent to the Township, the appellant and the affected person. The Notice of Inquiry was provided to the affected person in her capacity as both a representative of the various organizations mentioned in the records and as an individual whose personal information may be contained in the records. Representations were received from the appellant and the affected person.

DISCUSSION:

THIRD PARTY INFORMATION

The Township claims that sections 10(1)(a), (b), (c) and (d) and 10(2) apply to the records.

Sections 10(1) and (2) of the Act state:

- (1) A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
 - (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
 - (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;

- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
 - (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.
- (2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

For a record to qualify for exemption under sections 10(1)(a), (b) or (c) the Township and/or the affected person must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

[Orders 36, M-29 and M-37]

For a record to qualify for exemption under section 10(1)(d), the Township and/or the affected person must satisfy each part of the following test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied in confidence, either implicitly or explicitly; **and**
3. disclosure of the record could reasonably be expected to:
 - (a) reveal information of the type set out in (1) which was supplied to a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute;

OR

- (b) reveal the report of a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute.

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In order to satisfy part one of the section 10(1) test, the Township and/or the affected person must establish that disclosure of the information contained in the records would reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

As stated above, the Township did not submit representations. In her representations, the affected person did not address the application of section 10 of the Act. In addressing the first part of the test, the appellant simply stated that this part of the test does not apply to the records.

Based on the representations and my review of the information remaining at issue after the appellant narrowed the scope of the request, I find that its disclosure would not reveal the types of information described above. I find, therefore, that the first part of the section 10 test has not been met.

Even if I had found that disclosure of the information would reveal the relevant types of information and I had accepted that it was supplied to the Township, I have been provided with no evidence to indicate that it had been supplied to the Township **in confidence**, either explicitly or implicitly. Furthermore, there is no evidence before me to indicate that disclosure of the information would result in one of the harms specified in sections 10(1)(a), (b) or (c). Finally, I have no evidence before me to suggest that the records at any time involved a conciliation officer, a mediator, a labour relations officer, or another person appointed to resolve a labour relations dispute as described in section 10(1)(d).

As the test for section 10(1) has not been satisfied, I find that sections 10(1)(a), (b), (c) and (d) of the Act do not apply to exempt the information from disclosure.

In addition to sections 10(1)(a), (b), (c) and (d), the Township has denied access to the records on the basis of section 10(2) of the Act. In my view, section 10(2) is not an exemption, but rather provides for disclosure of a record if the person to whom the information relates consents to the disclosure. In this appeal, the affected person did not consent to the disclosure of the records. Accordingly, I find that section 10(2) has no application.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

In her representations, the affected person indicates that she is involved in the organizations mentioned in the records as an unpaid volunteer. Reviewing the information remaining at issue, I find that the affected person's name, signature and organization title qualify as her personal information.

INVASION OF PRIVACY

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 Township 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.

In its decision, the Township did not refer to any of the considerations or presumptions contained in sections 14(2) or (3) respectively.

The affected person, although not referring to any of the specific considerations addressed in section 14(2), expressed the view that as a volunteer member of a non-profit/charitable organization, she is entitled to certain privacy rights, including the non-disclosure of information such as her name, home address and telephone number. She submits that the very nature of the request, which seeks documentation in which her name appears, violates her right to privacy. It should be noted that the appellant is not seeking access to the affected person's address or telephone number, so this information is no longer at issue in this appeal.

The appellant submits that section 14(2)(d) of the Act (fair determination of rights) is a relevant consideration in this appeal. Section 14(2)(d) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant submits, as does the affected person, that they are parties to an action initiated by the affected person in the Ontario Court, General Division. The appellant has provided some background information describing the nature of the affected person's action and his need, as the defendant in the proceeding, for the information at issue. He also explains why, in addition to the discovery process which exists through the courts for the production of documents, he believes that access to this information under the Act will ensure that he has available all of the evidence which he requires in order to present a proper case.

The affected person submits that the information is not relevant to the court action and should not, therefore, be disclosed to the appellant.

Having reviewed the records, I find that section 14(3) has no application in the circumstances of this appeal. In addition, I find that section 14(2)(d) of the Act is a relevant consideration weighing in favour of the disclosure of the information. The appellant is entitled through the discovery process in the court action to the disclosure of certain documents from the affected person. I find, however, that the information at issue in this appeal may not be accessible from the Township by the affected person and yet it may be of some assistance to the defendant in responding to the allegations raised by the affected person in her action. For this reason, in my view, the personal information is relevant to a fair determination of the appellant's rights within the meaning of section 14(2)(d).

Balancing the factors which favour the disclosure of the personal information against the factors favouring privacy protection, I find that in the circumstances of this appeal, the appellant has successfully established that the factors weighing in favour of disclosure, particularly that in section 14(2)(d), outweigh the privacy considerations relied upon by the affected person. Accordingly, I find that the disclosure of the affected person's personal information which is described above would not constitute an unjustified invasion of her personal privacy and it should be disclosed to the appellant.

ORDER:

1. I order the Township to disclose the information remaining at issue in this appeal, as described above, to the appellant by **February 12, 1997**, but not before **February 7, 1997**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

January 8, 1997

Donald Hale
Inquiry Officer