



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

# **ORDER M-898**

**Appeal M\_9600314**

**Town of Flamborough**



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## **BACKGROUND:**

The appellant is a columnist for a newspaper in the Town of Flamborough (the Town). In his column, he has written regularly on the issue of tax arrears and the Town's treatment of property tax delinquents.

On September 6, 1996, a "sham" newspaper, the Flamborough Expositor, was circulated through the mail to 400 Town businesses accusing the appellant of being in a conflict of interest given that he owed substantial arrears on his own property. The article contained numerous other comments about the appellant. The article was written anonymously and contained a copy of the tax certificate on the appellant's property setting out the arrears.

## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Town under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the identities of those individuals who, during the period of September 1, 1995 to September 11, 1996, had applied to the Town for a copy of the tax certificate on his property. He also sought access to all related records.

Pursuant to section 21 of the Act, the Town notified two individuals whose interests may be affected by the disclosure of the information at issue (the affected persons). The affected persons declined to consent to the disclosure of this information.

The Town then issued a decision denying access to the records in their entirety under section 14 of the Act (invasion of privacy).

The appellant's counsel appealed this decision.

This office sent a Notice of Inquiry to the Town, the appellant and the individuals whose interests may be affected by disclosure of the information contained in the records. Representations were received from all parties. Along with its submissions, the Town forwarded copies of newspaper articles detailing the events which lead to the request under the Act. In addition to the information set out in the "Background" section of this order, these articles indicate that the appellant has written about his request and appeal under the Act in his newspaper column.

During the inquiry, the appellant agreed to limit the scope of his request to the following records:

- (1) Town Interdepartmental Memoranda concerning the requests for information related to the tax certificates (two pages).
- (2) Receipts issued to the two affected persons for payment of the tax certificates (two pages).

- (3) Handwritten letter from one of the affected persons to the Town requesting a copy of the tax certificate (one page).

## **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. I have reviewed the records to determine if they contain personal information and, if so, to whom the personal information relates.

The Town Interdepartmental Memoranda do not contain references to either the affected persons or the appellant. The names of Town employees are noted on these documents in their professional capacity. I find that these records contain no personal information and should be disclosed to the appellant.

The receipts contain the names of the individuals who requested copies of the tax certificate and the dates on which the requests were made. The written request from one of the affected persons contains this individual’s name and address. The address of the other affected person does not appear anywhere in the documentation in this file. I find that the receipts and the handwritten letter contain solely the personal information of the affected persons.

Section 14(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it “does not constitute an unjustified invasion of personal privacy.”

Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it.

If none of the presumptions in section 14(3) apply, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The personal information at issue does not fall within any of the presumptions in section 14(3) of the Act. Accordingly, I will consider those factors listed in section 14(2), as well as all the other circumstances of this case in determining whether disclosure of the requested information would result in an unjustified invasion of the personal privacy of the affected persons.

### **Considerations Favouring Non-Disclosure**

In its decision letter, the Town relied on the following factors set out in section 14(2) to deny access to the records:

- section 14(2)(e) - the individual will be exposed unfairly to pecuniary or other harm

- section 14(2)(h) - the personal information has been supplied by the individual to whom it relates in confidence
- section 14(2)(i) - the disclosure may unfairly damage the reputation of any person referred to in the record

### **Exposure to Pecuniary or Other Harm and Unfair Damage to Reputation (sections 14(2)(e) and (i))**

In its representations, the Town submits that these are relevant considerations as the appellant has indicated that he wishes access to the information in order to file a lawsuit. One of the affected persons emphasizes his concern that, should a lawsuit be filed, he could be exposed to significant legal costs in defending against such an action. In addition, he submits that his reputation as well as that of other individuals, including his family, could be “severely and unfairly damaged”.

The other affected person is concerned that he would unwittingly become involved in “someone else’s battle” and thus be subject to difficult and embarrassing questions.

In his submissions, the appellant refers to Order M-746 of this office. The circumstances which resulted in that order were similar to those in the present appeal. In Order M-746 an individual sought access to the name and address of an individual who rented a facility at which the appellant was injured. In that case, the appellant submitted that she required the name of this individual in order to initiate legal proceedings. Inquiry Officer Laurel Cropley considered the application of sections 14(2)(e) and (i) of the Act as follows:

In order for sections 14(2)(e) and (i) to be considered relevant, there must be an element of unfairness resulting from disclosure of the personal information. The fact that disclosure of the applicant’s name may expose him to civil action does not amount to unfairness.

I agree with this approach and find that it is equally applicable in the circumstances of this appeal.

In my view, the fact that the affected parties may be subject to a civil suit would not be an **unfair** exposure to pecuniary or other harm or result in **unfair** damage to their reputations. Therefore, I find that sections 14(2)(e) and (i) are not relevant considerations favouring non-disclosure of the personal information of the affected persons.

### **Personal Information Supplied in Confidence (section 14(2)(h))**

In its decision letter and representations, the Town set out its position on this issue as follows:

... it is the consistent practise and procedure of the Town of Flamborough to advise requesters and complainants that request(s) (made under the Act) or not and/or complainant(s) are confidential, and that the requester’s/complainant’s

name and any documents such as written requests or related documentation, will not be disclosed in accordance with Section 14(1)(a) of the Act without the original requester's/complainant's written permission.

...

... both requesters were each assured at the outset of the request process that this information would be treated as confidential. The release of the information would compromise the integrity of the process with which the Town deals with requests and complainants ...

Both the affected persons emphasize that the Town explicitly told them that their requests for copies of the tax certificate would be kept confidential.

Based on the information provided by these parties, I am satisfied that the personal information of the affected persons, i.e. their names, the address of one of them and the fact that they requested the tax certificates, was supplied to the Town explicitly in confidence. This is a relevant consideration under section 14(2)(f) of the Act.

I would note, however, that section 415 of the Municipal Act provides that the treasurer, on demand, shall give a written certified statement of arrears due on any land. The tax arrears information is therefore a "public record" which can be provided to anyone who asks for it. In these circumstances, it is my view there is no need to encourage requests for the certificates with the promise of confidentiality.

Requests made under the Act are generally for information that is otherwise not publicly available. Names of complainants are frequently protected by assurances of confidentiality to encourage individuals to come forward to report infractions of law enforcement matters. Because of these distinctions, it is my opinion that the underlying rationale for expectations of confidentiality in requests made under the Act or complaints is not applicable to the facts of this appeal. In these circumstances, without the Town's acknowledgement, supported by the affected persons, that the assurances of confidentiality were **explicit**, the information before me would not support a finding of implicit confidentiality.

#### **Considerations Favouring Disclosure (section 14(2)(d))**

The appellant has continuously maintained that the information he seeks may be used in a lawsuit. He has indicated that he intends to commence an action for defamation against the individuals responsible for the publication of the "sham" newspaper. In his submissions, he states that he has exhausted all other means to locate this information including contacting Canada Post and appealing to readers of his newspaper column. Denying him access to this information would amount to an unfair result as he would be effectively precluded from commencing a civil action to redress his damaged reputation. Therefore, he asserts that the personal information of the affected persons should be disclosed as it is relevant to a fair determination of his rights as set out in section 14(2)(d) of the Act.

This approach has been followed in Orders M-55, M-592 and M-746 of this office.

Based on the submissions of the appellant, I am satisfied that he has a legal right to pursue a civil action for defamation and that the names of the affected persons are crucial to a determination of this right. Thus, I find that section 14(2)(d) is a relevant consideration favouring disclosure of the names of the affected persons. While the appellant also indicates that he also requires their addresses in order to serve his Statement of Claim, I am not satisfied that the requirements of section 14(2)(d) have been established with respect to the address of the one affected person which appears in the record.

### **Conclusion**

The balancing of competing interests under section 14(2) of the Act is usually difficult. In this case, the affected persons were given explicit assurances by the Town that their identities would remain confidential. On the other hand, the appellant wishes to exercise his legal rights to sue for defamation which is only possible if he can identify the source of the anonymous allegations. I am mindful of the fact that there is no direct evidence before me that the affected persons, or one of them, authored the article in the "sham" Expositor; nor is there any evidence before me that this was not the case.

After considering all the relevant circumstances of this case, and balancing the competing interests of privacy protection and disclosure, I find that the interests of the appellant in exercising his legal rights outweigh the privacy interests of the affected persons.

Thus, I find that disclosure of the names and other information of the affected persons would not constitute an unjustified invasion of their personal privacy. However, I find that the mandatory exemption provided by section 14(1) applies to prohibit disclosure of the address of the one affected person which appears in the handwritten letter.

### **ORDER:**

1. I uphold the decision of the Town to deny access to the address of the one affected person.
2. I order the Town to disclose the balance of the records to the appellant by sending him a copy by **March 25, 1997** but not before **March 20, 1997**.
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 which are disclosed to the appellant pursuant to Provision 2.

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

February 18, 1997

Anita Fineberg  
Inquiry Officer