



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

Appeal MA-990101-1

Town of Ajax



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NATURE OF THE APPEAL:

The appellant is involved in a dispute with a neighbour which has led to civil proceedings. She made a request to the Town of Ajax (the Town) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to any records in the Town's Fire Department, By-law Section, and Building Section pertaining to complaints or investigations at two identified properties, from January 1998 to the date of the request. The appellant also requested a letter from a named building inspector confirming that he had informed the owner of one of the properties that the building complaint he had received was not lodged by a named individual.

Prior to issuing its decision regarding access, the Town contacted the appellant to clarify her request and determined that she may, in fact, be seeking records which were created prior to January 1998. The Town's search, therefore, encompassed a longer time frame.

The Town located 21 responsive records, granted full access to Records 3, 4, 5, 10, 11, 13, 14 and 15, granted partial access to Records 1, 2, 12, 16 and 17 and denied access to Records 6, 7, 8, 9, 18, 19, 20 and 21 pursuant to sections 8(1)(d), 14(1)(f), 14(3)(b) and 14(3)(g) of the Act. The Town advised the appellant that the named building inspector was no longer employed with the Town and no record responsive to this portion of the request exists.

The appellant appealed the Town's decision.

During mediation, the appellant agreed that she was no longer seeking access to the following:

- Records 6, 7, 8, 12, 18, 19 and 21;
- the personal information of the complainant making the by-law complaint in Record 9;
- the last line of the first paragraph in Record 17;
- the 10 pages of drawings, mandatory inspection form and Plan of Survey in Record 20.

Further, the appellant indicated that she is satisfied that no record exists relating to the named building inspector.

I sent a Notice of Inquiry to the Town, the appellant and two affected persons. In this Notice, I raised the possible application of sections 38(a) and (b) as it appeared that at least some of the records might contain the appellant's personal information. Representations were received from the Town and the affected persons. The appellant indicated that she would not be submitting representations but asked me to consider all of her discussions with the Mediator in arriving at my decision.

Subsequent to the issuance of the Notice of Inquiry, the appellant contacted this office to advise that she had received Records 9, 16 and 17 during the discovery process related to the civil proceeding and that they were, therefore, no longer at issue.

RECORDS:

The records remaining at issue consist of the following:

[IPC Order MO-1245/October 19, 1999]

- Record 1 - Fire Department Inspection Requisition - only the name, address and telephone number of an individual who made the requisition;
- Record 2 - Fire Department Fire Prevention Inspection Report - only the name, address, telephone number and identifying information of an individual who made the requisition; and
- Record 20 - a one page Building Permit, a two page Building Permit Application and two copies of the first page of the Building Permit Application.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (h) the individual's name if 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 examined the records, which consist of the Building Permit Application form, the actual Building Permit, and a Fire Department Inspection Requisition and Report. The Building Permit Application form and Building Permit requires the name, address, telephone number (and where applicable, the signature) of the owner and applicant as well as contractor and designer (where known). In my view, where the owner, applicant, contractor or designer is an individual, as in this case, the name, address, telephone number and signature qualify as personal information as defined in sections 2(1)(d) and (h) of the Act (Order M-138).

Therefore, I find that the name, telephone number, address and signature of the owners or applicants as well as the contractor and designer which appear on Record 20 qualify as the personal information of these individuals.

Regarding the property descriptions in the record, previous orders have found that addresses or geographical locations, in and of themselves, do not necessarily constitute "personal information" under section 2(1) of the Act (Orders 23, M-15, M-176 and M-181). In Order M-15, former Commissioner Tom Wright pointed out that a municipal location or address itself could not automatically be equated with

the address of its owner. Thus, a municipal address or legal description of a property alone would not necessarily reveal information about an identifiable individual.

I agree with this reasoning and accordingly, I find that the property description contained in the record taken alone, without reference to the owners' names, does not constitute personal information of an identifiable individual as defined by section 2(1) of the Act.

With two exceptions, the remaining information contained in Record 20 relates to renovations made to the specific residential property and does not, in my view, qualify as personal information (Order 23). The first exception to this is one reference on each of the Building Permit and the Building Permit Application form which, the Town indicates, stems from an investigation by the Town's Building Department resulting from a complaint into a possible building code infraction. The second exception concerns the date the affected persons submitted their application for a building permit and the date it was granted. In the circumstances of this appeal and given the relationship between the parties, I find that this information takes on a particularly significant personal characteristic and, in this context, is recorded information "about" an identifiable individual. I find that these references pertain directly to the owners and applicants and qualify as their personal information.

Finally, I find that none of the documents included in Record 20 contain the appellant's personal information.

With respect to Records 1 and 2, the only information which has been severed by the Town consists of the name, address, telephone number of a complainant and other information which would serve to identify the complainant. I find that this information qualifies as the personal information of the complainant in that it would reveal the fact that this individual made a complaint to the Town relating to a possible by-law infraction. Since the complaint was made against the appellant's use of her property, I find that these two records also contain the appellant's personal information.

For clarity, I have highlighted those portions of the records at issue which I have found to qualify as personal information.

LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

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 exceptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

The Town claims that section 8(1)(d) of the Act applies to exempt the withheld information in Records 1 and 2 from disclosure. This section states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

The Town indicates that its by-law complaint process has always guaranteed the confidentiality of complainants' identities in order to ensure that members of the public, on whom it relies to identify by-law infractions, will continue to provide this assistance to it.

Previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the Act (Orders M-16 and M-582). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal. Records 1 and 2 concern alleged infractions of the Town's by-law relating to land use and I find, therefore, that they relate to a law enforcement matter.

I have reviewed the records and the representations of the parties and find that the disclosure of the personal information which is highlighted on these records would reveal the identity of a confidential source of information in respect of a law enforcement matter, the investigation of possible violations of a municipal by-law. I find, therefore, that the highlighted portions contain information which qualifies for exemption under section 8(1)(d).

As I indicated above, section 38(a) of the Act provides the Town with the discretion to refuse to disclose the appellant's personal information where section 8 otherwise applies to the information. I have found that the highlighted portions of Records 1 and 2 qualify for exemption under section 8(1)(d) and therefore, section 38(a) applies to exempt this information from disclosure.

Because of this finding it is not necessary to consider the possible application of section 38(b) to these records.

INVASION OF PRIVACY

Given my conclusions above, the following discussion will apply only to the information which I have highlighted in Record 20.

As I noted above, Record 20 contains the personal information of individuals other than the appellant.

Where a record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) prohibits an institution from releasing this information.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Town claims that the personal information in Record 20 was compiled and is identifiable as part of an investigation into a possible violation of law. In this regard, the Town indicates that it investigated a complaint into a possible building code infraction and that this record contains the result of that investigation (section 14(3)(b)).

The Town does not rely on any other part of section 14(2) or (3) but indicates generally that there are no outstanding issues relating to the building code matter and no health or safety issues concerning the matter to warrant the release of this information.

The appellant's discussions with the Mediator focus on her court action and her desire to obtain information in a more informal manner than through the discovery process. The appellant is particularly interested in learning the date that the affected persons applied for a building permit. In my view, the appellant has raised the possible application of section 14(2)(d) (fair determination of rights).

The affected persons object to the disclosure of their personal information to the appellant. In so objecting they note that any relevant information pertaining to the civil action will be "brought out on the day of court".

I do not accept the Town's submission that section 14(3)(b) applies to Record 20 in its entirety. Previous orders of this office have found that section 14(3)(b) applies to personal information compiled as part of investigations under the Building Code Act, 1992 (M-1209). I agree. However, in my view, the only personal information contained in Record 20 which falls into this category consists of the references on the Building Permit and the Building Permit Application to the results of the investigation. I am satisfied that section 14(3)(b) applies to these references. I find that this information is severable from the remaining information in the record.

The documents themselves (ie. the Building Permit Application and the Building Permit) are routinely filed and/or obtained forms used by parties who wish to build on their properties. As such, they are not created or compiled for law enforcement purposes. I do not accept that the remaining information in these documents was created and/or compiled as part of the investigation into building code infractions. Therefore, I find that section 14(3)(b) does not apply to the remaining personal information in Record 20.

Although none of the parties have provided any detail about the court action, it appears to be related to harassment and nuisance. The Town notes in correspondence to this office that the situation between the parties is connected to, and has escalated from, a complaint made to the Town's Building Department that the affected persons had commenced construction of a deck on their property without a building permit.

The Town indicates that it understands that the request was made for the purpose of establishing a pattern of complaints concerning the two properties referred to above as well as to determine who made them. I have no doubt that the records at issue are in some way connected to the dispute which has arisen between the appellant and the affected persons. Given the nature of the dispute, I accept that the personal information in Record 20 has some relevance in the context of their disagreement. In Order M-903, former Adjudicator Donald Hale made the following comments on the relevance of information under section 14(2)(d) in the context of litigation:

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).

I note that the appellant has already had the benefit of discovery in the civil action and has advised this office of the records she received as a result. Record 20 was not listed as one of those records. Further, the appellant has not provided any representations relating this record to her current litigation. While it is possible that the personal information in Record 20 may yet be of some assistance to the appellant in her civil action, I have insufficient evidence before me to conclude that this factor carries significant weight.

Finally, it is apparent from the representations and the communications of the parties with this office that this is a very contentious matter as between the appellant and the affected persons. Although not specifically raised by the Town or the affected persons, I find that, in this context, disclosure of their personal information to the appellant under an access request would cause the affected persons considerable distress. Therefore, I find that this information is highly sensitive (section 14(2)(f)) and that this factor weighs significantly in favour of privacy protection.

In conclusion, I find that the presumption in section 14(3)(b) applies to the references in the Building Permit and the Building Permit Application to the results of the Town's Building Department's investigation into a building code infraction. I find further that although the remaining personal information in Record 20 may have some relevance in the appellant's litigation with the affected persons, this factor is of little weight for the reasons noted above. The fact that this information is highly sensitive in light of the relationship between the parties is, however, of significant weight. In the balance, I find that disclosure of the personal information in Record 20 would constitute an unjustified invasion of personal privacy and it is exempt under section 14(1).

No other exemptions have been claimed for the remaining information in Record 20, and I find that none apply. Therefore, this information should be disclosed to the appellant.

ORDER:

1. I uphold the Town's decision to withhold the information in Records 1, 2 and 20 which I have highlighted in yellow on the copy of the records which is being sent to the Town's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Town to disclose the remaining information to the appellant by providing her with a severed copy of the records by **November 24, 1999** but not before **November 19, 1999** from the date of this order.
3. In order to verify compliance with the terms of 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: _____ October 19, 1999
Laurel Cropley
Adjudicator