



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **INTERIM ORDER MO-1533-I**

**Appeal MA-010199-2**

**City of Toronto**



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## **NATURE OF THE APPEAL:**

This is an appeal from a decision of the City of Toronto (the City), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to her complete tenancy file with the City. In her request, she stated that she needed the file because she had sued the City and there was an impending trial.

The City issued a decision in which it granted access to certain records in their entirety, and other records with portions severed. In its decision, the City referred to the discretionary exemptions in section 7(1) (advice or recommendations) and section 12 (solicitor-client privilege) of the *Act*, and the mandatory exemption in section 14(1) (unjustified invasion of personal privacy), with reference to the presumptions in sections 14(3)(c) and (f). The City also applied sections 38(a) and (b) of the *Act* (discretion to refuse a requester's own information).

The City also provided a figure for photocopying costs which it requested the appellant to pay if she wished to proceed with her request.

After the decision, the appellant made a request to the City for a fee waiver under the *Act*. As of the time this matter was referred to adjudication, the City had not made a decision on that request, so if there are any issues about fee waiver, they are not before me.

During mediation through this office, the City agreed to release additional records in full to the appellant.

I sent a Notice of Inquiry to the City, initially, inviting it to make submissions on the issues in dispute. Following the issuance of the Notice of Inquiry, this office was informed that carriage of this appeal has been transferred to the Toronto Community Housing Corporation (the TCHC). The TCHC, which was incorporated to take the place of the Metropolitan Toronto Housing Authority, is a separate institution for the purposes of the *Act*.

The TCHC has sent representations in response to the Notice of Inquiry, portions of which it has asked be withheld from the appellant. I accepted this request with respect to certain portions of its representations, on the basis that sharing them would reveal the contents or substance of a record. The purpose of this interim order is to consider and rule on the request to withhold other portions of the representations.

### **Introduction**

IPC Practice Direction 7 provides a detailed description of the relevant procedures with regards to the sharing of representations. That Practice Direction states:

#### **General**

The Adjudicator may provide representations received from a party to the other party or parties, unless the Adjudicator decides that some or all of the representations should be withheld.

### **Request to withhold representations**

A party providing representations shall indicate clearly and in detail, in its representations, which information in its representations, if any, the party wishes the Adjudicator to withhold from the other party or parties.

A party seeking to have the Adjudicator withhold information in its representations from the other party or parties shall explain clearly and in detail the reasons for its request, with specific reference to the following criteria.

### **Criteria for withholding representations**

The Adjudicator may withhold information contained in a party's representations where:

- (a) disclosure of the information would reveal the substance of record claimed to be exempt or excluded;
- (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- (c) the information should not be disclosed to the other party for another reason.

For the purposes of paragraph (c) above, the Adjudicator will apply the following test:

- (i) the party communicated the information to the IPC in confidence that it would not be disclosed to the other party; and
- (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
- (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
- (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the litigation.

Six portions in the representations of the TCHC are at issue. They are contained in the institution's representations on the applicability of the solicitor-client privilege exemption in the

*Act* (section 12). In general, the information in these portions describes the type of record, the author, and the purpose for which the record was created.

The TCHC submits that the portions it seeks withheld contain sufficient information to reveal the substance of the record for which the exemption is claimed, and the record is one to which the *Act* applies. It is submitted that it is a requirement of law, and a function of public policy, to protect both the solicitor-client relationship and the litigation process by preserving the privileged nature of communications made for that purpose.

### **Analysis**

I am satisfied that none of the remaining portions of the representations would reveal the substance of a record claimed to be exempt or excluded. The information the TCHC seeks to withhold describes the records at issue with reference to general descriptors without describing their specific content. Further, this information is directly relevant to the contention of the TCHC that these records are covered by the section 12 (solicitor-client privilege) exemption in the *Act*. I find that fairness requires that the appellant be made aware of the basis of the TCHC's arguments in this regard, such as the nature of the records, the purpose for which they were created, and the positions held by their authors, so that she may have the opportunity to address these arguments.

Although the TCHC did not specifically address the other criteria for withholding representations, I am satisfied that they also do not apply.

For these reasons, I have decided that the six portions of the TCHC's representations still at issue should be shared with the appellant.

### **PROCEDURE:**

I have attached a copy of the TCHC's representations to its copy of this interim order. The portions that I have highlighted in yellow indicate the passages which I will withhold from the appellant. I intend to send the attached material, with the exception of the highlighted portions, to the appellant, together with a Notice of Inquiry, no earlier than May 13, 2002.

Original signed by: \_\_\_\_\_  
Sherry Liang  
Adjudicator

\_\_\_\_\_ April 30, 2002