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

ORDER MO-1629

Appeal MA-020123-1

Toronto Community Housing Corporation

80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The appellant resides in a building owned by the Toronto Community Housing Corporation (the Corporation). She contacted the manager of the building following an alleged altercation between her and the guest of another tenant in the building. A security officer was called and he completed a report with respect to her complaint.

The appellant subsequently submitted a request to the Corporation under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the report. The Corporation granted the appellant partial access to the requested record, withholding the name and address of the other tenant, and the names of her guest and the security officer (as well as his badge number) who attended and completed the report. The Corporation based the denial of access on the application of section 38(b) of the *Act* in conjunction with sections 14(3)(b) and 14(2)(i) (invasion of privacy).

The appellant appealed this decision. According to the appellant, she has now been charged with an offence in relation to what appears to be a protracted dispute with the other tenant and is seeking the complete report to assist her in addressing the charges in court.

During mediation, the Corporation disclosed one additional word from the report, which it had inadvertently severed from the record.

Further mediation could not be effected and this appeal was forwarded to adjudication. I sought representations from the Corporation and the individuals named in the record (the affected persons), initially. In addition to the exemptions claimed by the Corporation, I asked the parties to address the possible application of the "absurd result principle". I also enclosed Orders M-521, PO-1833 and P-1414, which address a number of the issues raised by this appeal.

The Corporation submitted representations in response. In its representations, the Corporation has withdrawn its objection to withholding the name and identifying number of the security officer employed by the Toronto Community Housing Company that operates the premises at which the alleged altercation occurred. Although this individual was notified of the appeal and provided with an opportunity to submit representations, he did not submit any. Neither did the other affected persons.

I subsequently sought representations from the appellant on the issues at adjudication, and attached the portion of the Corporation's representations that addressed the issues in dispute in their entirety, along with the above noted orders. The appellant did not respond.

RECORDS:

The record at issue consists of the withheld portions of a one-page "Security Services Department Incident Report".

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

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 [paragraph (h)].

In its representations, the Corporation acknowledges that the security officer's name and badge number appear in the record in connection with his capacity as an employee of the Corporation and in the context of the performance of his employment responsibilities. Accordingly, the Corporation recognizes that this information does not constitute his personal information.

I agree. Consistent with previous orders of this office (Orders P-257, P-427, P-1412 and P-1621, for example), I find that the security officer's name and badge number appear in his employment capacity and therefore, do not qualify as "personal" information. Therefore, the discretionary exemption in section 38(b) of the *Act* cannot apply to this information and it should be disclosed to the appellant.

The Corporation takes the position, however, that the remaining information at issue would identify the other individuals (the other tenant and her guest).

As I indicated above, the record at issue is an incident report on which the security officer recorded the details of a dispute between the appellant and the other tenant and her guest. I find that the record contains the personal information of all of these individuals since it consists of recorded information about their activities.

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) 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 Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 16 exemption.

As I noted above, the Corporation claims that the presumption in section 14(3)(b) and the factor in section 14(2)(i) apply in the circumstances, although it has only made submissions on the application of section 14(3)(b). I have also considered the possible application of the factor in section 14(2)(f) in determining this issue. In addition, as I noted above, the appellant indicates that she is seeking the record to assist her in court, thus raising the application of the factor favouring disclosure in section 14(2)(d) of the *Act*.

These sections read:

> (2) 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,
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (f) the personal information is highly sensitive;
>
> (i) the disclosure may unfairly damage the reputation of any person referred to in the record.
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (b) 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;

The Corporation's representations

The Corporation submits that the information in the record was compiled and is identifiable as part of an investigation into a possible violation of law (the *Tenant Protection Act*), (the *TPA*) pursuant to the presumption in section 14(3)(b) of the *Act*. In this regard, the Corporation points out that the security officer "investigated" the matter

> with a view to responding to a complaint made by a tenant, to address any anti-social behaviour occurring at the time, and with the view to the larger issue of preserving a record of events for the Landlord, were the Landlord ever to have to resort of the [*TPA*] to deal with anti-social behaviour … based on the findings of the officer.

The Corporation states further:

> Investigations of this nature conducted by the Respondent are potentially investigations which may bring to light factual situations on which the Respondent might rely if the Respondent were occasioned to take steps under the [*TPA*] to address tenancy issues …

Analysis and Findings

Part X of the *TPA* contains provisions relating to the administration and enforcement of the *TPA*. Section 206 sets out a number of offences under the *TPA*, and pursuant to section 200, the Minister is authorized and required to monitor, investigate and commence or "cause to be commenced" proceedings with respect to alleged failures to comply with the *TPA*. Section 202 of the *TPA* permits the Minister to appoint "investigators for the purpose of investigating alleged offences" and "inspectors" for other specific purposes.

I accept that the *TPA* contains provisions for enforcing and regulating compliance with respect to all matters covered by it. However, I have no evidence before me that the security officer is an investigator or inspector appointed under the *TPA*, or that he was conducting an investigation into a possible violation of law. In my view, the Corporation's vague references to potential steps it might take in dealing with anti-social behaviour are not sufficient to establish that the involvement of the security officer constituted an investigation into a possible violation of law as required by this section.

I acknowledge that the role of the security guard is, at least in part, to ensure the "reasonable enjoyment of the premises by the landlord or the tenants", but this is not sufficient to establish that his was a "law enforcement" function. Rather, the presence of the security guard appears to be to respond to, deal with and document the complaint. It may be that the incident report would be used in a subsequent law enforcement investigation pursuant to the *TPA*, but I am not satisfied, based on the Corporation's representations and the record itself, that the initial response by the security officer can be characterized as a law enforcement investigation.

On this basis, I find that the Corporation has not established the application of the presumption in section 14(3)(b) of the *Act*. On the other hand, I accept that incidents and altercations between different tenants, in themselves, carry some sensitivity. Therefore, I find that the factor favouring privacy protection in section 14(2)(f) (highly sensitive) is relevant in the circumstances. In light of my discussion below under the heading "Absurd Result", however, I conclude that this factor is of little weight.

Based on my review of the record and in the absence of representations from any of the parties apart from that referred to above, I find that I have insufficient evidence before me to conclude that either the factor favouring privacy protection in section 14(2)(i) or the factor favouring disclosure in section 14(2)(d) is relevant in the circumstances.

Absurd Result

In Order M-444, former Adjudicator John Higgins stated:

> Turning to the presumption in section 14(3)(b), the evidence shows that the undisclosed information was compiled and is identifiable as part of an investigation into a possible violation of law (namely, a murder investigation) and for that reason, it might be expected that the presumption in section 14(3)(b) would apply.
>
> However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.
>
> It is possible that, in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization. However, in my view, this is not such a case. Accordingly, for the reasons enumerated above, I find that the presumption in section 14(3)(b) does not apply. In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to the information at issue in the records.
>
> [Order M-444]

Several subsequent orders have supported this position and include similar findings (M-613, M-847, M-1077 and P-1263, for example). All of these orders have found that non-disclosure of personal information which was originally provided to the institution by an appellant, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. They determined that applying the presumption to deny access to the information which the appellant provided to the institution would, according to the rules of statutory interpretation, lead to an "absurd" result.

I invited the parties to address this issue. In response, the Corporation states:

> The Respondent submits that the principle of statutory interpretation relating to 'absurd result' does not apply to the circumstances of this appeal. On its face, the excluded information noted in the Incident Report was not provided by the Appellant but was compiled by the Security Officer attending at the time. It is therefore not information provided to us by the appellant.
>
> The Respondent submits that it is not in the position to know whether the Appellant had knowledge of the personal information excluded from disclosure, and accordingly made no assumptions in that regard.

As I indicated above, although notified, the security officer did not provide submissions. It is therefore, not possible to know what information was provided to him at the time he was notified and attended. Nor does it appear that the Corporation queried him on this point. Rather, the Corporation has made certain assumptions based on the cursory information contained in the record at issue.

However, I do not agree with the Corporation's conclusions in this regard. In her request, the appellant specifically identified the other tenant involved in the matter by her full name, her address at the time of the incident and provided some information about their relationship. In my view, it is clear that the appellant knows the name and address at the time of this individual and it is also likely that she either provided this information to the security officer or was present at the time he was collecting the information.

As a result, I find that in the circumstances, the personal information of the other tenant that is contained in the record is not particularly sensitive and the factor in section 14(2)(f) therefore, carries little weight.

Moreover, despite the relevance of the factor in section 14(2)(f), and the application of the presumption in section 14(3)(b) for that matter, were it to apply, I find that withholding this information from the appellant would result in an absurd application of the personal privacy provisions of the *Act*.

Insofar as the other tenant's guest is concerned, the above reasoning applies to this person's first name since it is clearly known to the appellant. However, I have no evidence before me that she is aware of his surname. In the absence of representations from the appellant, I find that disclosure of the surname of the other tenant's guest would constitute an unjustified invasion of his personal privacy.

Exercise of Discretion

The section 38(b) exemption is discretionary, and permits the Corporation to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Corporation's decision to determine whether it exercised discretion and, if so, to determine whether it erred in doing so (see: Order PO-2129-F).

Upon review of all of the circumstances of this appeal and the Corporation's representations, I am not satisfied that the Corporation has erred in the exercise of its discretion under section 38(b) to withhold the surname of the guest.

ORDER:

1. I uphold the Corporation's decision to withhold the surname of the guest.

2. I order the Corporation to disclose the remaining information in the record to the appellant by providing her with a severed copy of the record by **May 8, 2003** but not before **May 2, 2003**.

3. In order to verify compliance with this order, I reserve the right to require the Corporation to provide me with a copy of the record (as severed) which was disclosed to the appellant pursuant to Provision 2.

Original signed by: April 3, 2003
Laurel Cropley
Adjudicator