



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1598

Appeal MA-020103-1

City of Toronto



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

In February 2002, the appellant's dog was alleged to have bit a woman. She attended at hospital and received attention to her wounds. The hospital confirmed that her injuries were as a result of a dog bite and notified Animal Services at the City of Toronto. A ten-day order of confinement of the dog and an order to muzzle the dog were issued. The appellant appealed the orders in accordance with Animal Control procedures. Several days after the incident and prior to the dog's release from confinement, the appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City for access to all records pertaining to his dog and, in particular, for copies of the reports and medical records upon which the orders were issued. He asserted that he required the records to support the appeal of the two orders.

The dog was released from confinement with the elapse of the ten days. In April 2002, the City issued a decision granting partial access to the responsive records. The City denied access to portions of some of the records and to some records in their entirety on the basis of section 14 (personal privacy) of the *Act*.

The appellant appealed the City's decision.

At the mediation stage, one page of records was removed from the scope of the appeal. The appellant also indicated that, at the Animal Control hearing held in May 2002, he had received portions of four pages of records originally denied to him by the City. This information was also removed from the scope of the appeal. No other matters could be resolved through mediation.

The matter was subsequently referred to adjudication. This office initially sent a Notice of Inquiry setting out the issues in the appeal to the City. The City provided representations in response. This office then sent a Notice of Inquiry to the appellant, together with a complete copy of the City's representations. The appellant did not respond. No further representations were sought.

CONCLUSION:

The information contained in the records at issue and exempted from disclosure constitutes the personal information of other individuals and this information falls within the scope of the privacy exemption in section 38(b) of the *Act*.

DISCUSSION:

PERSONAL INFORMATION

The first issue for me to determine is whether or not the records contain personal information and, if so, to whom that information relates. The term "personal information" is defined in section 2(1) of the *Act*, in part, as recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

Having examined the records before me, I find that the records contain the personal information of the appellant and two other identifiable individuals. The information includes the names, addresses, and telephone numbers of the appellant and two other individuals, as well as information related to the medical history of one individual. Hence, the information meets the requirements for "personal information" as provided for in paragraphs (b), (d), and/or (h) of section 2(1).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/INVASION OF ANOTHER INDIVIDUAL'S PRIVACY

Introduction

Because the records contain the personal information of both the appellant and other identifiable individuals, the analysis appropriate to the circumstances of this appeal is that commenced by a consideration of the discretionary exemption provided by section 38 of the *Act*.

Under section 38(b) of the *Act*, where a record contains the personal information of both the requester 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.

Section 38(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, 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 the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the institution 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.

With reference to section 14(3), 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 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 14(3) presumption can be overcome, however, 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 14 exemption. [See Order PO-1764]

In this appeal, the City asserts that both the section 14(3)(a) and (b) presumptions apply in the circumstances of this appeal. The City submits that the 14(3) (b) presumption applies in respect to all of the records at issue and that the 14(3)(a) presumption also applies discretely to Records 24 to 33, which are hospital records. If I find that the section 14(3) (b) presumption applies to all the records at issue, I need not go further to consider the applicability of section 14(3)(a).

Section 14(3)(b) presumption

Introduction

Section 14(3)(b) reads as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

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;

Representations

The City submits that:

all of the personal information at issue was compiled by the City as part of its investigation into an alleged contravention of the City's *Municipal Code* 349–Animals (formerly by-law 28-99), as well as the *Dog Owner's Liability Act*.

The City asserts, therefore, that the presumption at section 14(3)(b) is applicable to exempt all of the information at issue from disclosure.

Findings

I agree with the City. It is clear to me that the information contained in the records at issue was compiled and is identifiable as part of an investigation into alleged violations of the law. Orders of this office have previously established that personal information relating to investigations of alleged violations of municipal by-laws falls within the scope of the presumption provided by section 14(3)(b) of the *Act* (Orders M-382 and M-181). Indeed, the evidence before me is that an investigation was undertaken and orders were made against and penalties imposed upon the appellant, in relation to his dog, based upon the information contained in the records at issue.

As indicated above, the section 14(3)(b) presumption cannot be overcome by any factors, listed or unlisted, under section 14(2). In addition, I find that no exceptions under section 14(4) apply.

As a result, I find that the City may refuse to disclose the information at issue under the exemption at section 38(b) of the *Act*.

EXERCISE OF DISCRETION

Representations

With respect to section 38(b), the City asserts as follows:

If the records containing the personal information of both the appellant and other individuals must be considered under section 38(b), (notwithstanding that none of the information at issue is the appellant's) the City submits that the privacy concerns of these individuals clearly outweigh the appellant's rights to this information and therefore, the City has properly withheld the information pursuant to section 38(b) in conjunction with sections 14(3)(a) and (3)(b) of the *Act*.

In the circumstances, I see no error in the City's exercise of discretion and therefore I uphold the City's decision to deny access to the information at issue.

ORDER:

I uphold the City's decision to deny access to the information at issue.

Original signed by: _____
Rosemary Muzzi
Adjudicator

December 17, 2002 _____