



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1671-I**

**Appeal MA-020400-1**

**Town of Caledon**



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## **NATURE OF THE APPEAL:**

A private individual made a request to the Town of Caledon (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a specific complaint registered against the individual and identified by number.

The Town granted the individual access to part of the complaint. The Town, however, did not release the complainant's name, address and telephone number, applying section 14 (personal privacy) of the *Act*.

The individual (now the appellant) appealed the decision.

The parties did not resolve the issues in mediation, so the matter was moved to inquiry.

While I sent Notices of Inquiry to both the Town and the appellant, only the Town responded and provided representations. The appellant elected not to file representations. I have carefully considered the Town's representations and all of the other information before me.

## **CONCLUSION:**

The information withheld by the Town qualifies for exemption under section 38(b) in conjunction with section 14. However, the Town must proceed to exercise its discretion under section 38(b).

## **ANALYSIS:**

### **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.

Having examined the record before me, I find that it contains the personal information of the appellant and another identifiable individual. The information includes the other individual's name, address and telephone number as well as similar and other information about the appellant. Hence, the information meets the requirements for "personal information".

### **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 another identifiable individual, 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 (Div. Ct.)].

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 Town asserts that the section 14(3)(b) presumption applies.

### **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;

The Town submits that:

Section 14(3)(b) applies to this request as the record was compiled in the course of investigating a complaint regarding an alleged contravention of the Town of Caledon's Comprehensive Zoning By-law.

The Town of Caledon requires complainants to provide their names, addresses and telephone numbers in order to have the complaint investigated. This information is required if further details are needed about the complaint and to confirm that the complaint is legitimate. The complainant is advised that this is personal information and that it will not be disclosed to anyone unless it is required for court purposes.

In this case, the investigation involved non-compliance with the Town of Caledon's Comprehensive Zoning By-law No. 87-250, as amended. The complaint focused on a commercial business operating in a residentially zoned area.

### **Findings**

I agree with the Town.

It is clear to me that the information contained in the record was compiled and is identifiable as part of an investigation into an alleged violation of the law. The section 14(3)(b) presumption applies as long as a record that contains personal information was compiled during the course of the investigation itself (Orders MO-1568, MO-1431, MO-1256).

Furthermore, orders of this office have **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 MO-1598, M-877, M-651, M-181).

As already indicated, 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 Town may refuse to disclose the information at issue under the exemption at section 38(b) of the *Act*.

### **EXERCISE OF DISCRETION**

The Town relied on section 14 to withhold the information in the record. As I have indicated, since this record contains personal information of both the appellant and another individual, the appropriate exemption to consider in this case is section 38(b). However, while section 14 is a mandatory exemption, section 38(b) is discretionary. In the circumstances, it does not appear that the Town has exercised its discretion under section 38(b). Accordingly, I will require it to do so.

**ORDER:**

1. I uphold the Ministry's decision to withhold the information in the record, subject to the exercise of discretion under section 38(b) of the *Act* referred to below.
2. I order the Ministry to exercise its discretion under section 38(b) of the *Act* with respect to the information in the record, taking into account all relevant factors and circumstances of this case, and with reference to the principles in Orders PO-2129-F and MO-1498.
3. I order the Ministry to provide the appellant and me with representations on its exercise of discretion no later than **August 5, 2003**.
4. The appellant may submit responding representations on the exercise of discretion issue no later than **August 19, 2003**.
5. I remain seized of this appeal in order to deal with the exercise of discretion issue, and any other issues that may be outstanding.

Original signed by: \_\_\_\_\_  
Rosemary Muzzi  
Adjudicator

\_\_\_\_\_  
July 22, 2003