

ORDER MO-1761

Appeal MA-030104-1

Township of Springwater

NATURE OF THE APPEAL:

The requester made a request to the Township of Springwater (the Township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a specified petition including the names of the petitioners who signed it. The requester had previously obtained partial access to the petition upon making an informal request to the Township. The Township had provided him with the text of both the petition and the attached covering letter, but it had withheld the petitioners' names and addresses.

In response to the requester's formal request under the *Act*, the Township issued a decision to him, denying access to the petitioners' names and addresses, relying on the exemption at section 38(a) (discretion to refuse requester's own information) in conjunction with sections 6(1)(b) (closed meeting) and 8(1)(d) (law enforcement). The Township advised the requester that it had notified the petitioners of the request, and that they had responded by objecting to the disclosure of their names and addresses.

The requester (now the appellant) appealed the Township's decision to deny access.

Mediation did not resolve this appeal, and the file was transferred to adjudication. Because the records may contain the personal information of both the appellant and other individuals, I added the discretionary exemption at section 38(b) (unjustified invasion of privacy) as an issue in this appeal. I also added as an issue whether one of the records is responsive to the appellant's request. I sent a Notice of Inquiry to the Township, initially, outlining the facts and issues and inviting the Township to make written representations. The Township submitted representations in response to the Notice. I then sent a Notice of Inquiry to the appellant, together with a copy of the Township's representations. The appellant, in turn, provided representations.

RECORDS:

The records at issue are:

1. A one-page letter to the Mayor – the name, address, telephone numbers and signature of the letter's author have been withheld and remain at issue;
2. A one-page petition – the names, addresses and signatures of the petitioners have been withheld and remain at issue; and
3. One typed page listing the names and addresses of some of the individuals who signed the petition, and some who did not.

BRIEF CONCLUSION:

Record 3 is not responsive to the appellant's request, and the information at issue in Records 1 and 2 is exempt from disclosure.

DISCUSSION:

RESPONSIVENESS OF RECORD 3

In conducting my inquiry, I observed that Record 3 appears to be an incomplete or inaccurate list of petitioners created by the Township. Accordingly, I asked the parties whether Record 3 is responsive to the appellant's request.

In its representations, the Township submits that it compiled Record 3 for the specific purpose of processing the appellant's request. Among other things, the Township submits:

Record 3 is a photocopy of mailing labels prepared by the Administration Coordinator for the purpose of addressing envelopes which contained the form letters sent to the petitioners with respect to the request for access to their personal information. ...

... the names and mailing addresses in the data fields are not identical to the list of names on the petition. It would appear that the data fields were created using ownership information from the Township's Property Assessment System for each municipal address on the petition. ...

...

... Record 3 was compiled by the Township after receipt of the appellant's request for the specific purpose of contacting the petitioners to obtain their consent/refusal for access to their personal information.

The appellant questions how many individuals who did not sign the petition are listed in Record 3.

Previous orders of this office have established that in order for a record to be responsive, it must be "reasonably related" to the request (for example, Order P-880).

Based on the record's contents and the parties' representations, I find that Record 3 is not "reasonably related" to the appellant's request. In his request, the appellant specified that he was seeking access to the petition, including the petitioners' names. Record 3 is an administrative document consisting of mailing labels that the Township created after receiving the appellant's request, when it contacted the petitioners for the purpose of asking them whether they consent to the disclosure of their personal information. As it happens, the names and addresses of the individuals listed in Record 3 are not identical to those who actually signed the petition (Record 2). Record 3 includes the names of some individuals who did not sign the petition, and it omits the names of others who did sign it. Record 3 does not accurately reflect the petition's contents, and it is therefore not responsive to the appellant's request. Rather, the information the appellant seeks appears in Records 1 and 2.

I will therefore uphold the Township's decision to deny access to Record 3.

PERSONAL INFORMATION

The next issue I must decide is whether Records 1 and 2 contain personal information, and if so, whose.

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 address or telephone number (section 2(1)(d)) or 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 (section 2(1)(h)).

The Township submits that the records contain the petitioners' personal information.

The appellant submits that the records contain his own personal information.

I have reviewed Records 1 and 2 and I find that they contain the personal information of both the appellant and the petitioners. More specifically, Record 1 contains the personal information of the appellant and one petitioner (including this individual's name, address and telephone numbers), and Record 2 contains the personal information of the appellant and all the petitioners (including their names and addresses).

INVASION OF PRIVACY

General principles

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from disclosure that limit this general right.

In its representations, the Township relies on section 38(b) in conjunction with section 14 to support its denial of access to the information at issue in Records 1 and 2. More specifically, the Township relies on the "presumed unjustified invasion of personal privacy" at section 14(3)(b) and various factors favouring privacy protection in section 14(2). Sections 38(b) and 14(3)(b) read:

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

(b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

14. (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;

Representations

With respect to the section 14(3)(b) presumption, the Township submits:

... Section 14(3)(b) applies to the letter (Record 1) and petition (Record 2) which were submitted to the Township in relation to a possible violation of law, namely the alleged violation of municipal by-laws at the [appellant's] lands.

The Township specifies that its Municipal Law Enforcement Officer investigated a number of activities as possible violations of one or more municipal by-laws.

The appellant strongly objects to his being denied access to the petitioners' identities. Among other things, he submits that individuals who bring complaints of this nature "do not have an expectation that their identity will be protected." Rather, he believes they should be "accountable" for their actions. He submits that he has a right to face his accusers and that their identities "would have every bearing on [his] rights;" the appellant is thus indirectly claiming that the factor favouring disclosure at section 14(2)(d) (fair determination of rights) applies. The appellant submits that the petition against him amounts to an invasion of his own privacy, and that he and his family have suffered a number of harms as a result of the petition.

Findings

In order for section 14(3)(b) to apply, the information must have been compiled and must be identifiable as part of an investigation into a possible violation of law.

Previous orders of this office have found that a petition that was compiled and is identifiable as part of an investigation into a possible violation of a municipal by-law meets the requirements of section 14(3)(b).

In Order M-580, former Inquiry Officer Holly Big Canoe considered whether section 14 applied in a case involving a request for access to the petitioners' signatures in a petition. The petition in that case recorded a complaint about the condition of an appellant's property; the scope of the request did not include the text of the petition. In deciding that the signatures were exempt by virtue of the presumption against disclosure at section 14(3)(b), former Inquiry Officer Big Canoe stated:

The Township claims that the presumption contained in section 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law) applies to the personal information at issue in this appeal. The

Township submits that the petition was submitted by concerned taxpayers to initiate action under the Township's Property Standards By-law.

...

The ordinary grammatical meaning of "compiled" is to gather or collect. Having reviewed the circumstances under which the record was supplied to and used by the Township, I find that it was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

Although petitions by their very nature are not documents which have an aura of confidentiality, there may be cases where, because of the sensitivity of their content, the requirements of a presumed unjustified invasion of privacy will be met. ...

Senior Adjudicator David Goodis followed this same approach in Order MO-1209, where he found that a complaint-driven petition was exempt under section 38(b) in conjunction with section 14(3)(b).

Based on these earlier orders and my review of the records and the parties' representations, I find that the information at issue in Records 1 and 2 was compiled and is identifiable as part of an investigation into a possible violation of law, thereby triggering the presumption of an unjustified invasion of the petitioners' privacy at section 14(3)(b). The presumption is not rebutted by section 14(4) or the "public interest override" at section 16, which was not raised in this case. In addition, a section 14(3) presumption 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 (Div. Ct.)). This information is therefore exempt under section 38(b). In addition, I am satisfied that the Township did not err in exercising its discretion to withhold this information.

Because the information at issue is exempt under section 38(b) in conjunction with section 14(3)(b), it is not necessary for me to review the Township's other exemption claims.

SEVERANCE

Section 4(2) of the *Act* requires the Township to disclose as much of the responsive records as can reasonably be severed without disclosing information that is exempt from disclosure. The Township has provided the appellant with the text of both the petition and the attached covering letter, but it has withheld the names, addresses and (in one instance) telephone numbers of the petitioners. I am satisfied that in the circumstances, the Township has made a reasonable effort to sever the records and it has disclosed as much information to the appellant as possible.

ORDER:

I uphold the Township's decision.

Original Signed By: _____

Shirley Senoff
Adjudicator

February 27, 2004 _____