



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1788**

**Appeal MA-030230-1**

**City of Orillia**



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:**

The appellant wrote to the City of Orillia (the City) seeking access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to the fire department's investigation of a particular fire in which an individual was killed (the victim). The appellant is a representative of the insurer of the building in which the fire took place.

The City identified 32 responsive records and advised the requester that it was denying access to all of them on the basis of the exemptions for law enforcement records (section 8) and personal privacy (section 14).

The appellant then appealed the City's decision to this office.

During the mediation stage of the appeal, the appellant agreed not to pursue access to Records 1, 2, 3, 17-22, 28, 31 and 32.

In addition, the appellant agreed not to pursue access to certain portions of Records 4, 5, 7, 9, 10, 14, 15, 16, 23, 24, 25, 26 and 27, as identified by the mediator.

Also, the appellant provided a signed statement from the property owner consenting to the disclosure of the property owner's personal information to the appellant.

Mediation was not successful in resolving all of the issues in the appeal, and the appeal was streamed to the adjudication stage of the process.

I sent a Notice of Inquiry setting out the issues in the appeal to the City, which provided representations in response. In its representations, the City stated that it was no longer relying on the section 8 law enforcement exemption. As a result, only the section 14 personal privacy exemption remains at issue.

I then sent the Notice, together with the City's representations, to the appellant, who in turn provided representations.

## **RECORDS:**

Since Record 7 and 16 are identical, I will remove Record 16 from the scope of the appeal. The 18 records remaining at issue in this appeal are described as follows:

<b>Record Number</b>	<b>Record Description</b>
4	Witness statement of fire fighter
5	Witness statement of fire fighter
6	Fax cover sheet from the City to the Office of the Fire Marshall (OFM)
7	Incident summary report
8	Fax transaction report
9	Staff notes
10	Staff notes

<b>Record Number</b>	<b>Record Description</b>
11	Fax cover sheet from the City to the OFM
12	Response documentation
13	Fax transaction report
14	Witness statement of fire fighter
15	Witness statement of fire fighter
23	Incident summary report
24	Citizen involved report
25	OFM report
26	Event details report
27	Fire investigation report
30	Witness statement of property owner

As indicated above, the appellant has agreed not to pursue access to certain portions of these records.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **General principles**

The City states the information it withheld from Records 4, 5, 7, 14, 15, 23, 24, 25, 26, 27 and 30 is exempt under section 14.

The section 14 personal privacy exemption can apply only to personal information. Therefore, the first issue for me to decide is whether the records contain personal information and, if so, to whom it relates.

Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in their professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

#### **Representations**

The City submits that the records at issue contain personal information relating to City firefighters, “the victim”, “a citizen” and “the 911 caller”.

The City also states:

The owner's personal information has not been severed because the [IPC] provided the City with an Authorization for Release of Information form signed by the owner.

The appellant submits:

The City's [representations] in this regard do not take into consideration recent Orders P-257, P-2427, P-1412, P-1538, and P-1621 . . . [A] distinction must be made between the individual's personal information and the individual's professional official government capacity information. These records contain information that was produced in a professional or official government capacity. Several of the records that were subject to severing should not have been severed since the individual's name does not appear with other personal information relating to the individual. The City's representations are unresponsive in this regard.

In addition, the property owner's personal information should not be severed from the records and record number 30, "witness statement of the property owner" should not be severed from the records since it contains information provided by the property owner [who has consented to disclosure of his personal information].

### **Findings**

The information the appellant has agreed not to seek consists mainly of other individuals' personal information. Once this information is removed, very little of the remaining information meets the definition of personal information.

Records 4 (page two) and 5 (page two) contain brief passages relating to the emergency crews' treatment of the victim and I find that this information constitutes the victim's personal information.

In addition, Record 30, a statement given by the property owner, describes the property owner's personal interactions with the victim. In the circumstances, the information of the two individuals is so intertwined that it is not reasonably possible to separate one individual's information from that of the other individual.

The remaining information associated with the names of individuals, such as fire fighters and other professionals clearly is not those individuals' personal information. I find nothing in these records that would reveal "something of a personal nature" about these individuals.

## PERSONAL PRIVACY

### Introduction

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The only exception that could apply in these circumstances is section 14(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of information would constitute an unjustified invasion of personal privacy.

The only information that could qualify for exemption under section 14 is two small portions of Records 4 and 5, and all of Record 30. In the circumstances, the appellant must persuade me that disclosure would *not* constitute an unjustified invasion of privacy.

### Representations

The appellant submits:

The disclosure of information at issue does not constitute an unjustified invasion of personal privacy. The records contain information that relates to the cause and origin of a fire only. The records will assist in determining the cause and origin of the fire and the resultant payment of the insurance claim under the *Insurance Act*. It will also resolve issues of liability for the cause of the fire. The information is not highly sensitive. Disclosure of the personal information is justified due to the fact that disclosure is necessary and required for our legal right to continue our investigation under the *Insurance Act*. Insurance policies contain “statutory conditions” as required by section 148 of the *Insurance Act*. Statutory condition number 12 states that loss is payable within 60 days after the completion of proof of loss. Therefore, timing is critical considering that insurers must treat insured’s with the “utmost good faith”. Insurers are also cognizant of recent punitive damages claims so that claims must be settled or denied in the time frame specified by the *Insurance Act*. Physical evidence at the scene was significantly altered by fire department personnel and the Ontario Fire Marshal’s office. The records contain information that was collected from the fire scene prior to the alteration of the fire scene. Spoliation of the site evidence should also be a consideration for disclosure. These records are required for the Appellant to prepare a report on the cause and origin of the fire.

The City submits:

Disclosure of the information at issue constitutes an unjustified invasion of personal privacy because the information would be damaging to: the victim's reputation according to section 14(2)(i); the victim's financial situation according to section 14(3)(f) and is highly sensitive according to section 14(2)(f).

The appellant has not persuaded me that disclosure of the personal information in Records 4, 5 and 30 would not constitute an unjustified invasion of privacy. The information at issue relates to personal actions and interactions involving the victim and the property owner, and is not the type of information that would shed any significant light on the cause of the fire. Accordingly, the appellant's basis for arguing that disclosure would not constitute an unjustified invasion of privacy does not apply to this information. Therefore, I find that the personal information in Records 4, 5 and 30 is exempt under section 14 of the *Act*.

### **Conclusion**

Portions of Records 4 and 5, and all of Record 30, are exempt under section 14. The remaining records or portions of records are not exempt and must be disclosed to the appellant.

### **ORDER:**

1. I order the City to disclose all of the records at issue to the appellant no later than **May 26, 2004**, with the exception of the highlighted versions of Records 4, 5, 7, 9, 10, 14, 15, 23, 24, 25, 26, 27 enclosed with the City's copy of this order. To be clear, the City should *not* disclose the highlighted portions.
2. I reserve the right to require the City to provide me with copies of the material disclosed to the appellant in accordance with provision 1.

Original signed by: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_ May 5, 2004