



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER MO-2136-F

Appeal MA-050117-1

City of Toronto



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND AND NATURE OF THE APPEAL:

This is my final order disposing of the sole outstanding issue in Interim Order MO-2126-I.

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to social assistance payments made to the appellant's former spouse. The appellant indicated that he had sponsored his former spouse's admission to Canada, and is obliged to repay the social assistance payments made to his former spouse during the sponsorship period before he is able to sponsor any other individual's admission to Canada.

The City created a record which it identified as the responsive record at issue in this appeal. That record consisted of a draft letter (that had not been sent), addressed to the appellant, stating:

I am replying to your request for access to the amount of Ontario Works Assistance that has been issued to [the named former spouse]. Your request, under the [Act], was received on [an identified date].

Please be advised that the total amount of General Welfare/Ontario Works Assistance to be reimbursed to the City of Toronto is [a specified dollar amount].

The City denied access to the record on the basis of sections 14(1) and 38(b) (invasion of privacy).

After conducting an inquiry and receiving representations from the City, I found that the responsive record qualified for exemption under section 38(b). However, I also found that the City, in stating that it exercised its discretion not to disclose the record on the basis that it was constrained from doing so by Order MO-1906, took into account an irrelevant factor in exercising its discretion not to disclose the record.

On that basis, I found that the City erred in exercising its discretion under section 38(b), as it took into account an irrelevant consideration, and I ordered the City to re-exercise its discretion without taking into account that irrelevant factor. The relevant order provisions in Interim Order MO-2126-I read:

2. I order the City to re-exercise its discretion under section 38(b) of the *Act*, without taking into account irrelevant considerations, using the above as a guide.
3. I order the City to provide me with representations on its exercise of discretion no later than **December 18, 2006**.

In compliance with these provisions, the City has provided representations to me.

DISCUSSION:

EXERCISE OF DISCRETION

Section 38(b) of the *Act* requires the City to properly exercise its discretion in deciding whether to provide the appellant with access to the record.

The City submits:

The City confirms that it wishes to release the amount owed by the appellant to him and that it has re-exercised its discretion under section 38(b) of the *Act* taking into account only relevant factors ...

The City then identifies the factors it considered in deciding to release the record to the appellant. These include:

- the purposes of the *Act*, including the principles that individuals should have a right of access to their own personal information, the exemptions from the right of access should be limited and specific, and the privacy of individuals should be protected;
- the specific purposes of the exemptions in section 38(b) in conjunction with 14(1)(f) and 14(3)(c);
- the limited nature of the personal information of the former spouse contained in the record, and the appellant's knowledge of some of that information;
- the fact that the sponsor (the appellant) and the sponsored person (the former spouse) were required to have entered a written agreement, which included a consent to the release of the information in the record to the appellant, before the sponsorship could have been approved;
- that attempts were made to contact the former spouse to confirm her consent;
- that the appellant has received notice from Citizenship and Immigration Canada that he is in default of his sponsorship, and that he must repay the outstanding amount;
- that the appellant cannot sponsor another individual while he is in default of his previous sponsorship undertaking; and
- that the City will be unable to recover payment due to it if it is not able to disclose the record to the appellant.

Based on the representations provided by the City, I find nothing improper about the manner in which it exercised its discretion in favour of disclosing the record to the appellant.

ORDER:

I uphold the decision of the City.

Original signed by: _____
Frank DeVries
Adjudicator

_____ December 21, 2006