



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2304

Appeal MA06-287

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>

NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (the Act)* for a list of cheques that have been issued by the City and remain outstanding, including

... outstanding cheques for companies not individuals for the period [of] January 01, 2006 to March 31, 2006 for amounts \$1000.00 and greater.

The requester specified that she was seeking information in regard to the following fields: cheque number, payment date, payee name, amount paid and address to which the cheque was sent.

The City issued a decision and provided partial access to one responsive record, disclosing the information sought by the requester in all of the above specified fields with the exception of the “cheque number” and “amount paid” fields. The City cited the application of section 11 (economic and other interests) of the *Act* to deny access to the information contained in the two non-disclosed fields of the record.

The requester (now the appellant) appealed the City’s decision.

During the mediation stage of the appeal process, the City confirmed that it was relying on section 11(d) (injury to financial interests) of the *Act* to deny access to the “cheque number” and “amount paid” fields of the record.

The parties were not able to resolve the appeal during mediation and the matter was referred to the adjudication stage for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry and seeking representations from the City. The City submitted representations in response. I then issued a second Notice of Inquiry to the appellant along with a severed version of the City’s representations. Portions of the City’s representations were withheld due to confidentiality concerns. The appellant submitted representations in response, which I shared in their entirety with the City for the purpose of receiving reply submissions. The City elected not to submit reply representations.

RECORD:

There is one record at issue, comprised of a two page list, containing information relating to cheques issued by the City in the following fields: cheque number, payment date, amount paid, currency, name of payee and payee’s address (including city, postal code and country). Only the information contained in the “cheque number” and “amount paid” fields remains at issue. The information in the other four categories has been disclosed to the appellant.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

Section 11(d): injury to financial interests

Section 11(d) states:

A head may refuse to disclose a record that contains,

information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

The purpose of section 11 is to protect certain economic interests of institutions. The report titled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For section 11(d) to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Parties' representations

The City states that the appellant is the General Manager of a named company that provides "recovery opportunities for Canadian companies, including the recovery of 'unclaimed money'." The City acknowledges that it has previously given the appellant access to "detailed information relating to outstanding or stale-dated cheques." However, the City states it has decided to depart from this approach on the recommendation of its Accounting Services due to the rising incidence of fraudulent activities in the last few years. The City submits that over this time it has experienced "a noticeable increase in the number of fraudulently produced, cashed and/or endorsed cheques [resulting in] substantial financial losses being incurred." The City states that its Accounting Services has advised that "cheque fraud has become a significant problem with the technological advances in copiers, laser printers and scanners." The City submits that with these advances the "criminal element no longer requires the physical cheque itself to commit fraud." The City's Accounting Services believes that the "release of cheque payment details has

had a direct effect on these fraudulent activities”. The City states that following discussions with “the Royal Bank of Canada, the Ministry of Consumer and Business Services, the Bankers Association, the Toronto Police Services and other law enforcement agencies”, it has taken steps to “enhance its cheque issuance and reconciliation processes to reduce risk.” The City states that it has also put “procedures in place to limit incidents of fraud, including the restriction of the release of information such as cheque numbers and their amounts to persons and business entities other than to payees named in the cheques.”

Despite these new measures, the City states that it recognizes that there may be a public interest in information relating to stale-dated cheques and, as a result, routinely makes general information available to the public in the Treasurer’s Quarterly Report, including the total number and value of outstanding or stale-dated cheques.

The City has provided information, furnished by its Accounting Services, to illustrate how the disclosure of the information at issue in the record could be used to commit fraud as well as information documenting the number and total value of fraudulent cheques presented to the City in 2005. For reasons related to confidentiality I am not able to disclose these portions of the City’s representations in this decision.

While the City acknowledges that it has no evidence of any fraudulent activity on the part of the appellant, it relies on the principle that “disclosure is disclosure to the world” and, accordingly, argues that there is no guarantee that if the information at issue is released it will not fall into the hands of unscrupulous individuals or criminals.

The City believes it has an “obligation to ensure that all measures are in place to minimize the risks of [fraud and to] prevent the resulting and escalating financial losses [that] the City’s taxpayers must bear.” The City asserts that disclosing the cheque numbers and amounts would “not only allow these fraudulent activities to occur but it could also undermine the other steps taken by the City to diminish the risks of such occurrences.”

The City, therefore, submits that “in the circumstances of this appeal” disclosure of the information at issue could reasonably lead to harms to its financial interests and should be exempt from disclosure under section 11(d).

In response, the appellant submits that disclosing the information contained in the “cheque number” and “amount paid” fields in the record at issue could not reasonably be expected to be injurious to the City’s financial interests.

The appellant states that while she and her company appreciate the necessity to reduce cheque fraud, she argues that any cheque issued by the City could be viewed as a potential instrument of fraud since all cheques reveal the kind of information that is contained in the record at issue in this case, including the cheque number and amount paid. In the appellant’s view, short of no longer issuing cheques, there is no foolproof method of eliminating the risk of cheque fraud. She submits that many other institutions across North America issue outstanding cheque lists and that they safeguard against fraud by implementing procedures and audit controls to prevent the occurrence of fraud.

The appellant believes that the City has denied access to her request not out of concern for potential cheque fraud but rather due to a misguided view regarding the intent of her request.

Analysis and findings

As noted above, for section 11(d) to apply, the City must demonstrate that disclosure of the withheld portions of the record “could reasonably be expected to be injurious” to its financial interests. To meet this test, the institution must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”.

The City’s position is that disclosure of the “cheque number” and “amount paid” fields of the record could reasonably be expected to result in the harm contemplated by section 11(d), as a result of the increased incidence of cheque fraud due to technological advances that allow an individual to commit fraud without the need to hold the actual issued cheque.

The appellant disagrees, arguing that any cheque issued by the City could be viewed as a potential instrument of fraud since all cheques contain the kind of information that is at issue in this case. The appellant believes that the City’s stance is attributable to a misguided view of the reasons for her request, not out of any real concerns of cheque fraud.

I have carefully examined the parties’ representations and conclude that the City has provided detailed and convincing evidence to establish that disclosure of the non-disclosed portions of the record could reasonably be expected to be injurious to the City’s financial interests.

The City acknowledges that in the past it has disclosed the kind of detailed cheque information that the appellant is seeking in this case, but that on the advice of its Accounting Services it will no longer do so in order to diminish the potential of cheque fraud. I acknowledge that any cheque could be used as an instrument of fraud. However, I also recognize that we now live in a world in which the financial and banking information of individuals and corporations is more readily accessible due to the increased sophistication of criminals to gain access to electronically stored information coupled with technological advances in copiers, laser printers and scanners. In effect, it is no longer necessary to hold a cheque to commit cheque fraud.

The key issue to consider is whether non-disclosure of cheque numbers and cheque amounts could reduce the risk of financial injury to the City. In this case, the requested information is contained within actual cheques issued by the City that have not been cashed. Disclosure of the information at issue could allow someone to exactly replicate actual cheque numbers, dates and amounts of uncashed cheques, which would make it far easier for someone to write a fraudulent cheque and cash it without being detected. The circumstances are different from a situation in which someone copies information from a cheque issued by the City that will actually be cashed by the intended recipient. In the latter case, duplicating the cheque number and amount should be much easier to detect as there would be two identical cheque entries. Accordingly, in my view, the precautionary procedures taken by the City, including the decision to withhold the cheque numbers and cheque amounts, puts it in a significantly better position to protect itself against fraud.

In addition, while it is not for me to question the appellant's motivation for pursuing this information, I agree with the City that disclosure of the cheque number and amount paid fields represents "disclosure to the world" and once in the public domain, there is no way of limiting or controlling the use of this information for illegal purposes.

Accordingly, I am satisfied that disclosure of this information could reasonably be expected to be injurious to the City's financial interests.

The City has stated that it recognizes that there may be a public interest in the release of information relating to stale-dated cheques and, with this in mind, routinely makes general information available to the public, including the total number and value of outstanding stale-dated cheques. In the interests of transparency, I hope that it will continue to adhere to this policy. However, I reiterate that I am satisfied that by withholding this information, the City is acting prudently and proactively to safeguard against incidents of fraud. Accordingly, I find that the City has provided sufficient evidence to establish that disclosure of the information at issue would result in the harm contemplated by section 11(d).

ORDER:

I uphold the City's decision to deny access to the severed portions of the record.

Bernard Morrow
Adjudicator

May 15, 2008