



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2538

Appeal MA09-276

Toronto Community Housing Corporation



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/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant lives in a property administered by the Toronto Community Housing Corporation (the TCHC). She submitted a request to the TCHC under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to view the security tapes of the exterior front area, the internal front lobby, and a specific area on the second floor of an identified apartment building that were recording on a number of specific dates and times. The appellant also sought access to the “full names” of the tenants in an identified apartment unit.

The TCHC issued a decision advising that because there is no closed-circuit television (CCTV) located in the identified building that would capture the exterior front area or the specific area on the second floor, there is no video footage that is responsive to those portions of her request. The TCHC stated further that, although video footage responsive to the portions of her request related to the front lobby exists, it was denying access to it pursuant to section 38(b) (personal privacy), read in conjunction with section 14(1) of the *Act*.

Subsequently, the TCHC issued a second decision responding to the last point in the request, relating to access to the “full names” of the tenants in an identified apartment unit. The TCHC indicated that access to that information was also denied pursuant to section 38(b), read in conjunction with section 14(1) of the *Act*.

The appellant appealed both decisions.

During mediation, the TCHC indicated that the video footage of the front lobby for the dates and times requested by the appellant is not available. The TCHC issued a revised decision stating the following:

I [the Coordinator] was initially informed that your 1st and 4th locations (exterior front on May 19th, 10pm – midnight – [specified address] and 2nd floor bulletin board – 5am-9pm [specified date]) were not covered by cameras and thus no footage could be available.

CSU [Community Safety Unit] officers initially told me that there was footage available for the Lobby of [identified building address] 8pm – midnight on June 12, 2009 and 5am – 7 am [specified date]. Regrettably, I was misinformed by CSU staff, who understood me to be asking whether there was a camera in the locations, not if there was footage still in existence. I was later advised that there was no footage from these times remaining on the chip. Under [the TCHC’s] former CCTV policy, CCTV footage would be stored for a time period of about two weeks depending on the technology of the camera. Unfortunately, that means that by the time you made your Freedom of Information request, the footage would have already been erased.

In that revised decision, the TCHC also explained that as of September 2009, it adopted a 72-hour retention period for any CCTV footage. It enclosed a copy of the Board of Director's report which addressed the "*Toronto Community Housing Closed Circuit Television (CCTV) Surveillance Policy*", along with a copy of that new policy, with the decision letter.

Additionally, the TCHC reiterated its earlier position that footage for the exterior front and identified second floor area is not available as there is no CCTV in these locations and that CCTV footage of the front lobby is not available for the date and time specified in the request. The TCHC also stated that it is no longer relying on section 38(b) to deny access to the record containing the tenant's names, rather, it relies only on the mandatory exemption in section 14(1).

The appellant confirmed that she is appealing the TCHC's position that there is no footage because there are no CCTV cameras, that there is no footage because the CCTV footage was no longer available, and the denial of access to the tenant's names.

The TCHC created a record with the names of the tenants in the identified apartment unit and provided it to this office.

As no further mediation was possible, the file was moved to the adjudication stage of the appeal process. The adjudicator previously assigned to this file sent a Notice of Inquiry to the TCHC setting out the facts and issues on appeal. The TCHC responded with representations.

The previous adjudicator then sent a Notice of Inquiry to the appellant, along with a copy of the TCHC's representations which had been severed for confidentiality reasons. The appellant also submitted representations in response. The appellant requested that all of her representations be held in confidence.

RECORDS:

The record at issue in this appeal is the record created by the TCHC, which identifies the names of the tenants in the specified apartment unit.

DISCUSSION:

SEARCH FOR RESPONSIVE RECORDS

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221 and PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Orders P-624 and PO-2559]. To be responsive, a record must be "reasonably related" to the request [Order PO-2554].

A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request [Orders M-909, PO-2469, PO-2592].

A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control [Order MO-2185].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist [Order MO-2246].

Representations

TCHC has provided representations, including an affidavit sworn by its Privacy Co-ordinator, outlining the steps that were taken to search for records responsive to the appellant's request. The TCHC also provided copies of its *Report on [CCTV] Surveillance Policy* and photographs of the three areas identified by the appellant in her request.

I have reviewed the photographs provided by the TCHC and find that those taken at the disputed site (the second floor bulletin board) do not provide an adequate view of that location for me to determine that no camera is situated there. Accordingly, I do not find the photographs to be useful in determining this issue. My findings rather, are based primarily on the TCHC's representations.

In its representations, the TCHC states that its use of CCTV in its communities is a tool that it uses to "create safe, healthy communities." It notes that the cameras are not live-monitored and indicates that it has taken steps to achieve balance between individual privacy interests and ensuring safety and security for tenants, buildings and communities.

The TCHC notes that a new CCTV policy was developed in September 2009 to bring it in line with the guidelines set out by the Commissioner's office; however, the previous policy was in place during the time frame of the request. The TCHC indicates that its previous retention practice for CCTV footage was approximately two weeks, primarily because the technology used did not retain footage for a longer period of time. The TCHC notes, however, that newer technology was used for the cameras located at the address in question and the retention period for those cameras prior to September 2009 would be approximately 30-40 days, with footage being "dumped" some time along that time range.

With respect to its search for the footage requested by the appellant, the TCHC points out that there are no CCTV cameras that cover the front exterior of the building. Although there are two cameras situated at two locations within the lobby of the building, they do not view out onto the street. As well, the TCHC states that there are no cameras covering the second floor bulletin board. The appellant disputes the TCHC's claim that there is no camera covering the second floor bulletin board and describes what she believes to be a camera.

With respect to the existence of cameras that cover the front exterior of the building and the second floor bulletin board, the TCHC indicated that in responding to the appellant's access request, the Privacy Co-ordinator contacted the operating unit (OU) and the Community Safety Unit (CSU). The TCHC notes that the CSU officers "have first hand knowledge of the building layout and the positions of the cameras." The Privacy Co-ordinator indicates that the CSU told her that no cameras exist at the two locations in dispute.

After considering the representations submitted by both parties, I am satisfied that no cameras exist that cover the front exterior of the building and the second floor bulletin board. In the circumstances, I prefer the evidence provided by the TCHC over that of the appellant for a number of reasons: the CSU staff are very familiar with the locations of cameras as they are responsible for security in the building; neither the CSU nor other TCHC staff appear to have any reason to deceive the Commissioner's office in this regard; even if there were cameras in those locations, or tapes that contained some incriminating evidence, the TCHC's CCTV policy indicates that disclosure of the contents would be governed by the *Act*.

Throughout the processing of this appeal, and reiterated in her representations, the appellant has alleged that the TCHC is hiding information. In response to this allegation, the TCHC acknowledges that there was a month's delay in its receipt of the appellant's request. In this regard, the TCHC indicates that the appellant left her request with building management at the building in question on or around July 10, 2009. It notes that this building is operated by a contractor who did not forward the appellant's request to the Freedom of Information and Privacy office. The Privacy Co-ordinator indicates that upon notification of the existence of the request on August 17, 2009, she immediately obtained a copy of it and began to process it. The TCHC also confirms that it has reminded its contract staff of their obligations under the *Act*.

It is possible that the delay in receiving and responding to the appellant's request may have been a factor in the information being erased before TCHC staff was able to attempt to download the footage. Nevertheless, I accept the TCHC's explanation for the delay in its receipt and response to the appellant's request. In my view, there is no merit in the appellant's allegation that the TCHC had or has some ulterior motive in destroying or hiding the information at issue.

In her affidavit, the Privacy Co-ordinator outlines the steps she followed in attempting to locate the requested information. As I noted above, she contacted the OU and the CSU. She states that, initially, a CSU officer advised her that the requested information should have been available. I note that the Privacy Co-ordinator indicated in her supplementary decision to the appellant that it appears that the CSU initially misunderstood her request and thought she was asking whether CCTV cameras exist at the lobby location. Nevertheless, the CSU undertook to conduct a search. Unfortunately, the CSU unit experienced problems downloading the footage and information technology (IT) staff were then called in to investigate and repair the problem. At that time, the Privacy Co-ordinator indicates that she was told that the footage was not available, as it would have already been erased. The Privacy Co-ordinator states in her affidavit:

I have since been informed by the Manager of Building Systems and Telecom Services, whose department is in charge of the video cameras that footage at this site would not be stored longer than 30-40 days. This is due to the capacity of the

DVR [the equipment used for storing/downloading/viewing the footage], a March Networks 4410. All the CCTV footage is kept on a chip that automatically erases the earliest footage when the chip reaches capacity. By the time the appellant made her request in July, the footage from May would have been automatically erased. When I received the request in August, I am advised by IT, all the footage she requested would have been erased, as the chip would have reached capacity.

The Privacy Co-ordinator indicates further that investigations by the Building Systems and Telecom Services and IT staff have found the equipment to be working and that they cannot offer an explanation for its failure to function at the time efforts were made to download information from it.

Based on the TCHC's explanations of its CCTV system and the efforts that were made to retrieve the requested information from the front lobby cameras, I am satisfied that the information has been erased, and had very likely already been erased at the time the TCHC received the appellant's request. I am further satisfied that the TCHC has made reasonable efforts, using staff that are reasonably familiar with the type of information requested, to search for records responsive to the appellant's request. Accordingly, this part of the appellant's appeal is dismissed.

I will now turn to the appellant's appeal of the decision of the TCHC to deny access to the names of the tenants living in an identified apartment.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The information requested by the appellant consists of the full names of the tenants at an apartment identified by her. The record provided to this office was created by the TCHC to respond to the appellant's request. It shows the full names of the tenants and the identified address. I am satisfied that the record contains personal information within the meaning of that term as defined above. Moreover, I find that the record contains only the personal information of individuals other than the appellant.

PERSONAL PRIVACY

I note that initially, the TCHC claimed that the information was exempt pursuant to section 38(b); however, after creating a record that contained only the names of the identified tenants, the TCHC withdrew the discretionary exemption in section 38(b) and claimed instead, the application of the mandatory exemption in section 14(1). As I have found that the record does not contain the appellant's personal information, my analysis of this issue will be conducted under section 14(1) of the *Act*.

General principles

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. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

The section 14(1)(a) to (e) exceptions are relatively straightforward. I find that none of the exceptions in sections 14(1)(a) to (e) apply in the circumstances of this appeal. The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14. The TCHC submits that section 14(1)(f) applies in the circumstances of this appeal. This section states:

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.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). The appellant claims that the factors in sections 14(2)(b), (c) and (d) favour disclosure in the circumstances of this appeal. These provisions state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant has indicated that she does not wish to share any of the information she provided in her representations with any other party. I have considered her request that all information be kept confidential. I note that in her representations the appellant has outlined her very personal views regarding the circumstances she is living in at the identified apartment building and the grievances she has in this regard. She also indicates that her identity is known within that community as she has been very open about sharing it (which I will consider as an unlisted consideration). Due to the personal nature of her representations, I have decided not to refer in any greater detail to them regarding the three factors and unlisted consideration favouring disclosing she has claimed to apply. In the circumstances of this appeal, I find that it is not necessary to discuss her representations in detail because they are very brief, she is aware of the nature of the submissions that she has made, and I am not persuaded that any of the three section 14(2) factors or the unlisted consideration applies in the circumstances.

In analyzing the appellant's representations regarding disclosure of the requested information, I have considered the TCHC's description of its role and responsibilities. In this regard, the TCHC notes that its main purpose is to "administer social housing and the rent-geared-to-income (RGI) subsidies for the City of Toronto." The TCHC notes further that it is governed by the

principles of the *Act*, particularly in maintaining the privacy of tenants. The TCHC asserts that it “has a practice of not releasing the names of individuals in the buildings to anyone without the proper authority, including neighbours.”

14(2)(b): public health and safety and 14(2)(c): purchase of goods and services

With respect to the factors in sections 14(2)(b) and (c), I find that disclosing the full names of the individuals living in the identified apartment would neither promote public health and safety, nor would it promote informed choice in the purchase of goods and services, as the identities of tenants in the building have no relation to either of these factors in the circumstances of this appeal, as described by the appellant in her representations.

14(2)(d): fair determination of rights

For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

Overall, the appellant’s representations refer generally to matters that might pertain to her “legal rights”. However, the appellant’s representations on this factor are very brief and do not provide sufficient detail that would permit me to conclude that: the right is related to a proceeding, either existing or contemplated; the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. As a result, I find that the factor in section 14(2)(d) is not relevant in the circumstances of this appeal.

Unlisted factor: disclosure of appellant's name

In my view, although the appellant has, through her own conscious actions, made her identity known within that apartment building community, that does not entitle her to know the identities of others living there. One of the fundamental aspects of an individual's privacy rights pertain to their ability to have control over the disclosure of information about them. The unilateral action of one person, such as the appellant, to decide to disclose personal information does not impinge on the privacy rights of others, or require the disclosure of their personal information. Accordingly, I find that this unlisted factor is not relevant in the circumstances of this appeal.

Conclusion

After considering the appellant's submissions in this appeal, I find that she has failed to establish that any factors favouring disclosure are relevant in determining that disclosure of the personal information requested would not result in an unjustified invasion of privacy. In the absence of any factors favouring disclosure, I find that disclosure would constitute an unjustified invasion of personal privacy.

Before concluding this issue, I must determine whether any of paragraphs (a) to (c) of section 14(4) apply, because if one of these paragraphs applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. The TCHC submits that none of the paragraphs in section 14(4) apply in the circumstances of this appeal. I agree. Accordingly, I find that the requested information is exempt under section 14(1) of the *Act*.

Because of these findings, it is not necessary for me to consider the other factors or presumptions set out in section 14.

ORDER:

1. I uphold the TCHC's decision to withhold the names of the tenants in the identified apartment unit from the appellant.
2. The TCHC's search for records was reasonable and this part of the appeal is dismissed.

Original Signed By: _____

Laurel Cropley
Adjudicator

July 14, 2010