

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## ORDER MO-3165

Appeal MA14-149

County of Haliburton

March 2, 2015

**Summary:** The appellant sought access to a letter received by the County of Haliburton (the county) concerning a bylaw complaint made against her by another individual (the affected party). The county denied access to the signature line of the record in accordance with section 8(1)(d) (confidential source in law enforcement matter) of the *Municipal Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator upholds the application of section 8(1)(d) to the affected party's name and signature, and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 8(1)(d).

### OVERVIEW:

[1] The appellant made a request to the County of Haliburton (the county) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a letter of complaint about a possible tree bylaw infraction relating to her property, including the identity of the complainant.

[2] The county located the letter and issued a decision granting partial access to it. The county denied access to the letter's signature line on the basis of the discretionary exemption at section 8(1)(d) (confidential source in law enforcement matter) of the *Act*.

[3] The appellant appealed the county's decision to this office. During the mediation stage of the appeal, the appellant clarified that she is seeking access to the name of the individual who wrote the letter in question (the affected party). The letter did not contain the affected party's name but only a signature, which is difficult to decipher. The county provided this office with the name of the affected party. Because the request included the identity of the complainant, I will consider the name and signature together to constitute the record at issue.

[4] The affected party did not provide consent to disclosure of his or her name, or to disclosure of the signature line of the complaint letter. The affected party also raised privacy concerns around disclosure of the information at issue. As a result, the mandatory exemption at section 14(1) (personal privacy) of the *Act* was added as an issue in this appeal.

[5] As mediation did not resolve the issues, the appeal was transferred to the adjudication stage of the process. I initially sought and received the representations of the county and the affected party. The county's representations were shared with the appellant; however, I found that it was not necessary to share the affected party's representations with the appellant. The appellant provided responding representations.

### **RECORD AT ISSUE:**

[6] The information at issue in this appeal is the affected party's name and the withheld signature in the complaint letter disclosed to the appellant.

### **ISSUES:**

- A. Does the discretionary exemption at section 8(1)(d) apply to the information at issue?
- B. Did the county exercise its discretion under section 8(1)(d)? If so, should this office uphold the exercise of discretion?

### **DISCUSSION:**

#### **LAW ENFORCEMENT**

**Issue A: Does the discretionary exemption at section 8(1)(d) apply to the information at issue?**

[7] Section 4(1) of the *Act* gives individuals a right of access to information held by a government institution. However, an institution has the discretion to deny an individual access to information where an exemption under the *Act* applies.

[8] The county claims that section 8(1)(d) of the *Act* applies to exempt the information at issue from disclosure. This section states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

[9] The term "law enforcement", as used in section 8, is defined in section 2(1) of the *Act*. Previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1).<sup>1</sup>

[10] For section 8(1)(d) to apply, the county must establish a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.<sup>2</sup>

## **Representations**

[11] The county submits that the affected party who wrote the letter "would be identified if the information [at issue] is disclosed." The county also states that "its bylaw complaint process needs to guarantee confidentiality of complainants' identities in order to ensure that members of the public will continue to provide assistance in identifying possible infractions..."

[12] The appellant did not make any specific representations regarding the application of section 8(1)(d); however, the appellant generally submits,

It is my assertion that the identity of the individual who complained to the County and made false allegations about me should not be withheld.

This individual knows who I am and where I live.

... I need to know all the information in this file.

It is my right, as law enforcement action was initiated against me.

[13] I have also considered confidentiality concerns raised in the affected party's representations. The affected party generally submits that he or she made the bylaw complaint with the understanding that bylaw complaints are "necessarily confidential".

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<sup>1</sup> Orders M-16, M-582, MO-1795, MO-1805 and MO-2238.

<sup>2</sup> Order MO-1416.

## **Analysis and finding**

[14] As noted above, previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the *Act*. I agree with those orders and adopt this finding for the purposes of this appeal.

[15] I have reviewed the record and considered the representations of the appellant, the county and the affected party. In this appeal, the information at issue concerns an investigation into a potential county by-law infraction relating to the removal of trees. I find, therefore, that it pertains to a "law enforcement" matter as defined in section 2(1). I also find that the county has established that the affected party had a reasonable expectation that his or her identity would remain confidential in the circumstances.

[16] Accordingly, I find that the disclosure of the name and signature of the affected party would reveal the identity of a confidential source of information in respect of the law enforcement matter.

[17] Therefore, the information at issue qualifies for exemption under section 8(1)(d).

## **EXERCISE OF DISCRETION**

**Issue B: Did the county exercise its discretion under section 8(1)(d)? If so, should this office uphold the exercise of discretion?**

[18] The section 8(1)(d) exemption is discretionary, and permits an institution to disclose information despite the fact that it could withhold it. On appeal, an adjudicator may review the institution's decision to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

[19] As I have upheld the county's decision to apply section 8(1)(d) to the information at issue, I must now review the county's exercise of discretion in determining not to release that information. I may find that the county erred in its discretion where, for example, it does so in bad faith or for an improper purpose, it takes into account irrelevant considerations, or it fails to take into account relevant considerations. In these cases, I may send the matter back to the county for an exercise of discretion based on proper considerations.<sup>3</sup> However, I may not substitute my own discretion for that of the county.

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<sup>3</sup> Order MO-1573.

## **Representations**

[20] As noted above, the county exercised its discretion to withhold the information at issue from the appellant.

[21] With respect to the manner in which the county exercised its discretion, the county submits that,

in refusing to disclose the information at issue, it considered all of the relevant factors, including the following:

Access was provided to the requested record with the exception of the name of the person who made the complaint;

There is a reasonable expectation of confidentiality within the County's bylaw enforcement process;

Release of confidential sources of information would undermine the County's ability to effectively investigate possible bylaw infractions;

People would be less likely to make complaints if they knew that their identity would not be anonymous.

[22] The county states that it did not err in its exercise of discretion not to release the information at issue to the appellant.

## **Analysis and finding**

[23] Upon review of the circumstances of this appeal, including the county's submissions and the information that was disclosed to the appellant prior to the appeal, I find that the county has not erred in its exercise of discretion by withholding the information at issue. It took into account relevant considerations and there is no reason to think that it considered anything improper or irrelevant. Accordingly, I find that the county's exercise of discretion was reasonable.

[24] As I have found that the information at issue is exempt from disclosure under section 8(1)(d), and that the county's exercise of discretion was reasonable, it is not necessary to consider whether the information at issue is also exempt from disclosure under section 14(1).

**ORDER:**

I uphold the decision of the county.

Original Signed By:  
Sherry Liang  
Assistant Commissioner

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March 2, 2015