



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

# ORDER P-371

Appeal P-9200452

Ministry of Natural Resources



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>

# ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

## BACKGROUND:

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of correspondence between an identified individual and the Ministry, in which the requester had been referred to by name. The Ministry decided to grant access to those parts of the correspondence in which the identified individual expressed opinions about the requester, and notified the identified individual of its decision. The identified individual appealed the Ministry's decision to release parts of his correspondence.

Mediation of the appeal was not possible, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry, and the original requester. Written representations were received from all parties to the appeal.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the requested information qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 49(b) of the Act applies.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the requested information qualifies as "personal information" as defined in section 2(1) of the Act.**

Personal information is defined in section 2(1) of the Act, in part, as:

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

...

- (e) the personal opinions or views of the individual except where 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
- ...

The record consists of eleven sentences or parts of sentences contained in various pieces of correspondence sent by the appellant to the Ministry. In three of the sentences or parts of sentences, the appellant expresses his personal opinions about the original requester. Accordingly, these three sentences or parts of sentences are properly characterized as "personal information" of the original requester as defined in subparagraph (g) of the definition. In the remaining eight sentences or parts of sentences, the appellant describes his personal opinions about events involving himself and the original requester, and I find that these eight sentences or parts of sentences are properly characterized as the personal information of both the appellant and the original requester.

**ISSUE B: Whether the discretionary exemption provided by section 49(b) of the Act applies.**

Section 49(b) of the Act states:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 49(b) is a discretionary exemption which, in the circumstances of this appeal, the Ministry has decided not to apply. In Order P-257, Assistant Commissioner Tom Mitchinson discussed the Commissioner's consideration of an exemption not claimed by a government institution:

In my view, ... the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner decides it is necessary to consider the application of a particular

section of the Act not raised by an institution during the course of the appeal. This could occur in a situation where it becomes evident that disclosure of a record would affect the rights of an individual, or where the institution's actions would be clearly inconsistent with the application of a mandatory exemption provided by the Act.

The Act gives all individuals the right to protection of privacy with respect to personal information about themselves held by government institutions. Because I have found under Issue A that eight of the eleven sentences or parts of sentences which form the record in this appeal contain the personal information of both the appellant and the requester, disclosure of the record would affect the appellant's right to privacy. Accordingly, in my view, I am obliged to consider the application of section 49(b) to the record.

Since I have found under Issue A that portions of the record contain the personal information of the requester only, disclosure of this information to the requester cannot constitute an unjustified invasion of the appellant's personal privacy and section 49(b) cannot apply.

With regard to the eight sentences or parts of sentences which contain the personal information of the requester and the appellant, section 47(1) of the Act gives to individuals the right of access to their own personal information which is in the custody or under the control of an institution. However, this right of access is not absolute; section 49 provides a number of exceptions to this general right of access to personal information by the person to whom it relates, one of which is section 49(b).

Section 49(b) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right to his or her own personal information against the appellant's right to the protection of his privacy. Although the Ministry may determine that release of personal information would constitute an unjustified invasion of the other person's personal privacy, section 49(b) gives the Ministry the discretion to grant or deny access to the information to the requester.

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the person to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry and the requester make no reference to section 21(2) or (3). The appellant makes reference to the substance of sections 21(2)(f) and (h) of the Act by referring to the information as "sensitive" and indicating that he thought it was confidential. Sections 21(2)(f) and (h) read:

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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

I have reviewed the record, and I find that neither section 21(2)(f) or (h) are relevant considerations in the circumstances of this appeal. The information cannot properly be characterized as highly sensitive, and there is no evidence or mark of confidentiality on any of the correspondence.

In my view, none of the factors which suggest that disclosure would result in an unjustified invasion of the appellant's personal privacy have been established or are evident on the face of the record. Accordingly, I find the disclosure of the information contained in the record would not constitute an unjustified invasion of the affected person's personal privacy, and therefore, section 49(b) does not apply.

### **ORDER:**

1. I uphold the head's decision to disclose the record to the requester.
2. I order the Ministry to disclose the record to the requester within 35 days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 2, **only** upon request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_  
November 19, 1992