



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

ORDER P-358

Appeal P-910269

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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

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 all copies of comments received by the Ministry from a named individual with respect to a proposed land exchange.

The record which the Ministry identified as being responsive to the request consists of three letters, totalling six pages in length. The Ministry denied access to the record pursuant to section 21 of the Act. Counsel for the requester appealed the Ministry's decision.

Mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and the author of the letters (the affected person). Written representations were received from the appellant, the Ministry and the affected person.

ISSUES:

The issues arising in this appeal are:

- A. Whether any of the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

Section 2(1) of the Act states, in part:

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

...

- (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,**

...

- (d) **the address,** telephone number, fingerprints or blood type of the individual;
- (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.

...

[Emphasis added]

The appellant submits that the information contained in the record consists of the affected person's personal opinions or views about the requester and, therefore, does not qualify as the personal information of the affected person, as the requester is the individual to whom the information relates.

The Ministry submits that the records contain the personal opinions of the affected person as to why the land exchange would adversely affect his right of access to his property; that the letters were implicitly provided in confidence; and that a portion of one of the records relates to a financial transaction in which the affected person was involved.

The affected person submits that the information contained in the record was provided only for the information of the Ministry.

I have examined the records and, in my view, they contain recorded information about a specific property and a proposed land exchange, not recorded information about any identifiable individual. The opinions and views expressed by the affected person in the records were sent to the Ministry in opposition to a proposed land exchange between the requester and the Crown. They are not, in my view, of a private, confidential, or personal nature.

The records do contain the home address of the affected person, and portions of all three records contain information relating to financial transactions in which the affected person has been involved. This information qualifies as personal information of the affected person.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

In Issue A, I determined that the home address and information relating to financial transactions in which the affected person was involved qualify as the personal information of the affected person. Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) of the Act reads as follows:

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.

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 individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The affected person and the Ministry do not rely on the application of section 21(3) and, in my view, the personal information contained in the record is not any of the types of information listed in section 21(3).

Section 21(2) of the Act provides some criteria for the Ministry to consider in determining whether the disclosure of the personal information would result in an unjustified invasion of the affected person's privacy. The affected person has not made reference to section 21(2) in his representations, but does indicate that he wants the records to remain confidential. The Ministry relies on sections 21(2)(e) and (f) to support its decision to deny access, and the appellant relies on sections 21(2)(a), (d), (e) and (g) to support disclosure. These sections of the Act 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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;

The appellant submits that sections 21(2)(e) and (g) weigh in favour of disclosure. If sections 21(2)(e) and (g) are found to be relevant considerations, these considerations would, by their wording, weigh in favour of **not** disclosing the record.

Other than stating that section 21(2)(a) is a relevant consideration, the appellant does not provide any information in support of this statement. In my view, the disclosure of the home address of the affected person and details of financial transactions in which he was involved is not necessary to achieve the purpose of section 21(2)(a).

In order for section 21(2)(d) of the Act to be regarded as a relevant consideration in the circumstances of an appeal, the appellant must establish each part of the following four-part test:

- (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 P-312]

The appellant submits that the personal information is relevant to a fair determination of the rights of the requester in her dealings with the Ministry, as it would enable her to determine the basis upon which the Ministry reached its conclusions. I am not satisfied that the home address of the affected person and information relating to financial transactions in which he has been involved have any bearing on or are significant to the determination of this "right", and I find that section 21(2)(d) is not a relevant consideration.

In summary, having considered the representations of all parties, and in the circumstances of this appeal, in my opinion, none of the considerations which weigh in favour of disclosure apply. In my view, disclosure of the affected person's home address and information relating to the financial transactions in which the affected person has been involved would constitute an

unjustified invasion of the personal privacy of the affected person. I have identified these parts of the record by "highlighting" them on the copy of the records which is being sent to the Ministry with this order.

ORDER:

1. I order the Ministry to disclose the parts of the record which are **not** highlighted in the copy of the records which is being forwarded to the Ministry with this order within 35 days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. I order the Ministry to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.
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 1, upon my request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 14, 1992