



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

ORDER P-401

Appeal P-9200340

Ministry of Government Services



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ORDER

BACKGROUND:

The Ministry of Government Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to "any and all allegations or representations made by a person, persons, or group, opposing the leasing of Part lot 10 - Concession 7 - Ottawa Front, City of Gloucester, Regional Municipality of Ottawa-Carlton by [the requester] with the Ontario Property Administration Section".

The record which the Ministry identified as being responsive to the request consists of eight pages. The Ministry gave the requester total access to three pages, and denied access to the remaining pages, in their entirety, pursuant to section 21 of the Act.

The three pages to which the requester was given access consist of two letters from the Ministry to the appellant advising the Ministry's position on the sale and lease of the parcel of land owned by the Province of Ontario.

The parts of the record not disclosed to the appellant consist of a one-page letter from an individual (the affected person) to the Ministry, and four pages of a Ministry official's notes of his telephone conversations with the affected person. The Ministry identified these pages as containing the personal information of the affected person and sought his/her consent for their release; however, the affected person withheld consent.

The requester appealed the Ministry's decision. Because the appeal could not be settled through mediation, a Notice of Inquiry was sent to the Ministry, the appellant and the affected person. Representations were received from all parties.

In its representations, the Ministry indicates that its discretion to deny access was exercised under section 49(b) of the Act.

ISSUES:

The issues arising in this appeal are:

- A. Whether 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 discretionary exemption provided by section 49(b) applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether 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,

...

(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,

...

(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 record contains the name, address, telephone number of the affected person as well as details of his/her concerns regarding the appellant's use of the government owned land. In my view, the record contains information which qualifies as personal information under one or more of the above-mentioned paragraphs of section 2(1) of the Act and relates to both the appellant and the affected person.

In his letter of appeal, the appellant states that he is not asking for the "names of the person, persons, or groups but simply what the representations and allegations are."

It is therefore necessary to determine whether severing the personal identifiers from the record will remove the remaining information from the scope of the definition of "personal information" under section 2(1).

In Order P-230, Commissioner Tom Wright has stated:

I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree with Commissioner Wright's view. In this appeal, I am of the view that there is such a reasonable expectation. The information remaining after the name, address, and telephone number of the affected person has been severed from the record, falls within the definition of personal information under subsection 2(1).

ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) applies.

I have found under Issue A that the record contains the personal information of the appellant and the affected person. Section 47(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of provincial institutions covered by the Act. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is found in section 49(b) of the Act, which reads as follows:

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) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against other individuals' right to the protection of his/her privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the Ministry the discretion to deny the requester access to the personal information [Order 37].

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of the 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. In its representations, the Ministry submits that section 21(3)(b) applies to the circumstances of this appeal. Section 21(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Ministry claims the section applies because it received the information in the course of "investigating the trespassing on Government land by the appellant which was being considered by the Ministry as possible violation of law." The Ministry makes no further representations to support the claim.

The Ministry has not identified the specific law which was allegedly violated by the appellant. Based on a review of the Ministry's correspondence with the appellant, and the contents of the record, it appears that the Ministry was engaged in the investigation of the alleged trespass in its capacity as the owner of the property, and not pursuant to any mandate to enforce the law. This position is supported by a letter the Ministry sent to the appellant, which states: "you are hereby ordered to remove all vehicles, equipment, debris and garbage from this area no later than November 14, 1991. Failure to do so will result in **civil action** being brought against you." (emphasis added)

I have reviewed the record and the circumstances under which the information was compiled. I am not satisfied that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, section 21(3)(b) has no application in the circumstances of this appeal.

Section 21(2) lists a number of circumstances the Ministry must consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy.

In their representations, the Ministry and the affected person submit that section 21(2)(h) is a relevant consideration in the circumstances of this appeal. Although the appellant does not specifically raise section 21(2)(d), his representations refer to the substance of that section, and I will consider its possible application in my discussion.

Sections 21(2)(d) and (h) of the Act read as follows:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Dealing first with section 21(2)(h), the Ministry submits that the affected person supplied the information to the Ministry in confidence. The Ministry states that, had the affected person thought that his/her communications would not be held in confidence, he/she "would not have communicated as freely and as openly with the Ministry's representatives about the appellant's activities on the subject lands."

The affected person states: "I reported the facts to the Ministry as a good corporate citizen ... It was my understanding that the reporting of this incident was appreciated and that my involvement would be kept confidential."

After carefully reviewing the representations, I am satisfied that, in the circumstances of this appeal, the personal information contained in the records was supplied by the affected person in confidence and, accordingly, I find that section 21(2)(h), a factor that weighs in favour of non-disclosure of the information, is a relevant consideration.

Turning now to section 21(2)(d), in order for the section 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 Ministry denied him the lease of the property based on the complaints it received. He states that he needs the requested information "so that I may be able to defend and vindicate myself in this matter." However, the appellant has not identified any **legal** right, nor has he provided any evidence which would indicate that such a right is related to an existing or contemplated proceeding. Accordingly, in the circumstances of this appeal, I find that section 21(2)(d) is not a relevant consideration. I also find that none of the other factors under section 21(2) which favour disclosure are present.

Having examined the record and considered the representations of all parties, it is my view that the disclosure of the record to the appellant would constitute an unjustified invasion of the personal privacy of the affected person. Accordingly, the exemption under section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption giving the Ministry the discretion to refuse to disclose personal information to the person to whom it relates. I have reviewed the Ministry's representations, and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

ORDER:

I uphold the Ministry's decision to deny access to the portions of the record at issue in this appeal.

Original signed by: _____
Asfaw Seife
Inquiry Officer

January 15, 1993