



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

# **ORDER M-176**

**Appeal M-9200366**

**County of Brant**



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# ORDER

## BACKGROUND:

The County of Brant (the County) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the "Weed Inspector's Reports for July and August 1992".

The County identified six responsive records and denied access to all of them, in full, claiming the exemptions in sections 8(2)(a) and 14(1) of the Act. The requester appealed the County's decision.

Mediation was not successful and notice that an inquiry was being conducted to review the County's decision was sent to the County and to the appellant. Representations were received only from the County.

The records which the County identified as responsive to the appellant's request are six, one-page documents entitled "Weed Inspections Reports", covering the period from June 22, 1992 through to and including September 26, 1992. The last report spans the time period from August 31, 1992 through September 26, 1992 but contains no information pertaining to the month of August and, as such, is not responsive to the request and will not be considered in this appeal.

The records which remain at issue are the other five "Weed Inspections Reports" spanning June 22, 1992 through to and including August 29, 1992.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the records 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 14(1) of the Act applies.
- C. Whether the discretionary exemption provided by section 8(2)(a) of the Act applies.

## SUBMISSIONS/CONCLUSIONS:

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

The County submits:

The record contains personal information in that it identifies an individual's name and address or location of residence.

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

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

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(h) the individual's name if 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 records are brief, point-form synopses of the County Weed Inspector's activities over the period covered by the report. The records set out a brief description of investigative and enforcement steps taken by the County Weed Inspector with respect to particular properties in his/her jurisdiction.

Previous orders have found that addresses or geographical locations in and of themselves do not necessarily constitute "personal information" under the section 2(1) definition. In Order M-15, which dealt with building by-law violations, Commissioner Tom Wright found that the information in the records related to the property itself and not to its owners or occupiers. In

addition, it was pointed out that an address or municipal location itself could not be automatically equated with the address of its owner and, thus, a municipal address alone would not necessarily reveal information about an identifiable individual. Following those principles, I find that the addresses contained in the records do not constitute personal information as defined by section 2(1) of the Act.

The records, however, also contain the names of individuals. In three instances individuals' full names have been set out together with addresses in such a fashion as to allow the reader to connect the two. The balance of the individual names contained in the records are: 1) those of persons who lodged complaints

with the Weed Inspector; 2) those which are descriptive of a particular property for which no municipal address is set out (eg. "Kitchener - the Jones property"); or, 3) those of other persons who have somehow been in contact with the Weed Inspector possibly as representatives of a business or other agency responsible for the property.

With respect to the three names that are set out together with municipal addresses, I find that the records show that these individuals' names have been included as either the owners or occupiers of particular properties which have been the subject of investigation or inspection by the Weed Inspector. I find that the fact of being identified as responsible for the alleged unlawful condition of a property is "other personal information" for the purposes of subparagraph (h) of the definition, and, therefore, those individuals' names constitute personal information under section 2(1) of the Act.

Similarly with those named in the records as having lodged complaints, the fact of their having made complaints is "other personal information" which renders their names personal information under subparagraph (h) of the definition in section 2(1).

I also find that the combination of the names of individuals (notwithstanding that many of those names are only surnames) with properties identified only by municipality is a sufficient connection to permit those individuals to be considered as "identifiable" under section 2(1) of the Act. That being so, the fact that those individuals were responsible for the alleged unlawful condition of properties also constitutes other personal information for the purposes of subparagraph (h) and, thus, makes the individuals' names personal information.

Concerning the other individuals named in the records as having been in contact with the Weed Inspector, seemingly as representatives of businesses or other agencies responsible for the properties, I have found nothing on the face of the records that would allow me to safely conclude that as a fact. Neither have I been provided with any evidence on that point in the County's representations. I have highlighted the names of individuals who seem to be representatives of businesses or other agencies responsible for the properties on the copy of the record sent to the County with its copy of this order. Should the County have knowledge that

one or more of the names I have highlighted appears as a result of the individual's role as a representative of a business or other agency, the name does not qualify as personal information. Otherwise, I find the fact of communication with the Weed Inspector to be "other personal information" for the purposes of subparagraph (h) and that these individuals' names are personal information as defined under section 2(1) of the Act.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14(1) of the Act applies.**

Under Issue A I found that certain names contained in the records qualify as personal information. Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information to any person other than the individual to whom the information relates except in certain circumstances listed under the section.

The County has made no representations with respect to section 14 except to say that:

The record contains personal information in that it identifies an individual's name and address or location of residence.

The appellant, as was mentioned earlier, has made no representations whatsoever on the appeal.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f) which reads:

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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In the circumstances of this appeal, neither the County nor the appellant has submitted representations raising factors weighing in favour of disclosure **not** constituting an unjustified invasion of personal privacy. As well, there is nothing on the face of the records themselves which would suggest that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. Accordingly, I find that the exception in section 14(1)(f) does not apply. Therefore, I find that the mandatory exemption from disclosure provided by section 14(1) of the Act applies to the names of the individuals I have identified as being personal information within the meaning of section 2(1) of the Act.

**ISSUE C: Whether the discretionary exemption provided by section 8(2)(a) of the Act applies.**

The County submits that all the records at issue qualify for exemption under section 8(2)(a) of the Act. Section 8(2)(a) of the Act reads:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

For a record to qualify for exemption under section 8(2)(a) of the Act, the County must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and M-17]

Applying the three-part test to the records at issue in this appeal, I am satisfied that the records meet the first and third parts of the test.

The word "report" is not defined in the Act, but to be a report, a record must consist of a **formal statement or account of the results** of the collation and consideration of information, and, generally speaking, those results would not include mere observations or recordings of fact (Order 200).

The "Weed Inspections Reports" are formal statements submitted to the County Council and are the results of the collation of information. The information collated in the reports are a chronological outline of the Weed Inspector's activities over the reporting period and provide some detail of the investigations, inspections and enforcement efforts he/she undertook. Thus, I find that the records are "reports" and satisfy the first part of the test.

As to whether the records satisfy the third part of the test, I am content that the Weed Inspector, having been appointed under section 6 of the Weed Control Act which specifically charges him/her with the enforcement of the Act, is "an agency which has the function of enforcing and regulating compliance with a

law". The records at issue are prepared by the Weed Inspector and, therefore, satisfy the third part of the test.

The matter of the records satisfying the second test of having been "prepared in the course of law enforcement" is more problematic, however. In Order 188, then Assistant Commissioner Wright dealt with subsection 14(2)(a) of the Freedom of Information and Protection of Privacy Act which corresponds to section 8(2)(a) of the Act. In that order he stated:

I feel that the use of the words "... report prepared in the course of ..." contemplates a report which is prepared as part of the actual investigation, inspection or law enforcement activity.

I agree. In this appeal the records are not reports prepared as **part** of any of the individual investigations, inspections or enforcement activities outlined in them. The "Weed Inspections Reports" outline those kinds of activities but they do so in reporting **all** of the Weed Inspector's activities to the council that appointed him/her. In a sense the reports are prepared as part of the employer-employee relationship; the reporting of a subordinate to his or her superior.

The records do not contain the type or amount of information one would expect to see in a report prepared as **part** of an investigation or inspection. In my view, the records do not satisfy the second part of the test under section 8(2)(a) of the Act and, therefore, do not qualify for the discretionary exemption set out in that section.

## **ORDER:**

1. I order the County to disclose the records to the appellant, with the exception that the County shall not disclose the names which qualify as personal information.
2. I order that the records, as described in Provision 1, be disclosed within 35 days of 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 this order, I order the County to provide me with a copy of the records which are disclosed to the appellant pursuant to the above provisions, only upon request.

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

\_\_\_\_\_  
August 17, 1993