



Information and Privacy
Commissioner/Ontario

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

ORDER M-197

Appeal M-9200412

Township of Maryborough



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Township of Maryborough (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for building permit data covering the period September to October 1992, including the names of persons who obtained permits, the property location and the type of construction. Subsequently, the requester extended the time period of the request to include data compiled to the end of December 1992. The Township granted partial access to the records responsive to the request but denied access to owners' names, property descriptions and permit fee information contained therein, relying upon section 14(1) of the Act. The requester appealed the Township's decision.

During mediation, the Township attempted to obtain the consent of the property owners to disclose the information at issue. The owners of two of the properties identified in the record consented to the disclosure of the information relating to those properties and it was provided to the appellant. The appellant confirmed that the only information now being sought was the names of the property owners and their property descriptions. The parties agreed that the only record at issue would be the summary reports of building permit information provided to members of the Township Council.

Further mediation was not successful and notice that an inquiry was being conducted to review the Township's decision was sent to the Township, the appellant and the owners of 34 properties who did not consent to disclosure (the affected persons). Representations were received from four of the affected persons.

RECORD AT ISSUE:

The record at issue in this appeal is a five page list of building permits issued by the Township between August 31 and December 21, 1992. The list contains columns of information under the following headings: owner's name and property description, permit fee, type of structure and the estimated cost of the project. The date of issuance of the building permit is also indicated for each entry on the list. The property description consists of a legal description of the property referring to the parcel, lot and concession number within the Township.

ISSUES:

The issues 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 mandatory exemption contained in section 14(1) of the Act applies to this information.

ISSUE A: Whether the information contained in the record 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 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;

Personal information is defined as recorded information about an identifiable **individual**. In Order 16, former Commissioner Sidney B. Linden canvassed the meaning of personal information as it relates to individuals and business entities. He stated that:

The use of the term "individual" in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the Act as "personal information" when read in their entirety, lend further support to my conclusion that the term "personal information" relates only to natural persons.

I adopt this reasoning for the purposes of this appeal.

In Order M-138, Inquiry Officer Holly Big Canoe also considered records containing building permit information and made the following comments regarding the names and addresses of individuals:

Proposed buildings for which building permits are sought may be owned by, and building
[IPG Order M-197/October 7, 1993]

may be undertaken by, individuals or business entities. In my view, where the owner or builder is an individual, the name and address qualify as personal information as defined in sections 2(1)(d) and (h) of the Act. In my opinion, where the owner or builder is a business entity, the name and business address are not personal information.

The record in this appeal identifies by name, the owners of particular properties who have been issued building permits. In my view, if the owner is not a natural person, the name does not qualify as personal information within the meaning of section 2(1) of the Act. Where the owners are natural persons, I am satisfied that their names would constitute personal information.

Regarding the property descriptions in the record, previous orders have found that addresses or geographical locations, in and of themselves, do not necessarily constitute "personal information" under section 2(1) of the Act (Orders 23, M-15, M-176 and M-181). In Order M-15, Commissioner Tom Wright pointed out that a municipal location or address itself could not automatically be equated with the address of its owner. Thus, a municipal address or legal description of a property alone would not necessarily reveal information about an identifiable individual.

I agree with this reasoning and accordingly, I find that the property descriptions contained in the record taken alone, without reference to the owner's name, do not constitute personal information of an identifiable individual as defined by section 2(1) of the Act.

To summarize, I find that only the names of individual owners who are natural persons qualify as personal information.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption contained in section 14(1) of the Act applies to this information.

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.

Neither the Township nor the appellant provided any representations on this subject. In my view, the only exceptions to the section 14(1) mandatory exemption which have potential application in this appeal are sections 14(1)(a) and (f) of the Act which read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual,

if the record is one to which the individual is entitled to have access;

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

One of the affected persons consented in his/her representations to the disclosure of his/her personal information to the appellant. Pursuant to section 14(1)(a), the disclosure of this individual's name would not constitute an unjustified invasion of personal privacy and it should, therefore, be released.

With respect to section 14(1)(f), because this 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.

Under the Act, the burden of proof that a particular exemption applies to a requested record generally lies on the institution or other party resisting disclosure. However, once it has been established that the record contains personal information and is subject to the mandatory exemption from disclosure in section 14, the burden shifts to the party seeking disclosure who must establish that the personal information comes within one of the exceptions to the mandatory exemption.

In this case, the appellant, who is the party seeking disclosure, has not provided any representations. In the absence of any evidence to establish the exception in section 14(1)(f), I find that the mandatory exemption from disclosure in section 14(1) of the Act applies to the names of the individuals identified under Issue A as being personal information. The result is that this information is not to be disclosed.

ORDER:

1. I uphold the Township's decision to withhold the names of individual owners who are natural persons.
2. I order the Township to disclose to the appellant all of the property descriptions contained in the records and the names of owners who are not natural persons within 35 days following the date of this order but not earlier than the thirtieth (30th) day following the date of this order. I have provided to the Township a highlighted copy of the record. The information which is **not** to be disclosed to the appellant has been highlighted.
3. I order the Township to disclose to the appellant the name of the property owner who consented to the disclosure of his personal information within 15 days after the date of this order.
4. In order to verify compliance with this order, I order the Township to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 2 and 3, **only** upon request.

Original signed by: _____
Donald Hale
Inquiry Officer

October 7, 1993