



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario_ 1 -**

ORDER P-631

Appeal P-9300142

Ministry of Municipal Affairs



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ORDER

On January 4, 1994, 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 Ministry of Municipal Affairs (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to an investigation conducted by the Guelph Office of the Ministry's Field Management Branch into the activities of the Township of Arthur (the Township). This investigation followed the Ministry's receipt of a petition submitted under section 178 of the Municipal Act requesting an inquiry into the Township's administration.

The Ministry granted access to some records, and explained why some other records do not exist. Access was denied to the remaining records on the basis of sections 17 and 21 of the Act. The requester appealed the Ministry's decision to deny access to these records.

During mediation, the Ministry disclosed some of the information to which it had originally denied access. Further 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 two authors of the records (the affected persons). Representations were received from the appellant, the Ministry and one affected person.

The records which remain at issue are:

- Record 1: Observations made by a Councillor about a Council meeting of August 10, 1992. These observations were appended to a letter submitted by the Councillor to the Ministry.
- Record 2: Notes dated June 25, 1992, submitted by a Councillor to the Ministry.

Following the receipt of representations, it was determined that the interests of a number of individuals in the community might be affected by the release of these records. The appellant indicated that he did not wish to pursue information in the records which might qualify as the personal information of individuals in the community.

Neither the Ministry nor the affected person provided representations under section 17 of the Act. Because section 17(1) is a mandatory exemption, I have independently reviewed the

contents of the records to determine if there is anything on their face which would indicate that they qualify for exemption under this section. In the absence of submissions in support of this section, I am of the view that none of the information contained in the records qualifies for exemption under section 17(1) of the Act.

ISSUES:

The issues 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 21 of the Act applies to the records.

SUBMISSIONS/CONCLUSIONS:

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

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

"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
- (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;

In its representations, the Ministry indicates that Record 1 relates to events at a Council meeting as personally recorded by a Councillor, and that Record 2 recounts events at a number of Council meetings as personally recalled by another Councillor. Both records were provided to the Ministry in response to an investigation conducted by the Ministry into certain activities carried out by the Township.

The Ministry further submits that the records qualify as the personal information of the affected persons because they contain recorded information about these individuals, were submitted to it in confidence (subparagraph (f)), and because both records set out the authors' personal observations (subparagraph (e)).

It has been established in a number of previous orders that information provided by an individual in a professional or business capacity or in the execution of employment responsibilities is not personal information (Orders 113, P-257, P-326, P-333, P-377, P-394 and P-515).

Having reviewed both records, I am of the view that their contents relate to information obtained by the affected persons while serving in their professional capacities. It is also my view that the affected persons were acting in their professional capacities in providing these records to the Ministry. I therefore find that the information contained in the records cannot properly be categorized as the personal information of the two affected persons under section 2(1) of the Act.

In his representations, one affected person focuses on the possible impact that the disclosure of Record 1 will have on individuals in the community referred to in the record, and to one party in particular.

I have reviewed the information in the records relating to individuals other than the affected persons and the appellant. In my view, although most of the information contained in the records is general in nature, and primarily relates to Township matters and business activities in the community, there are a number of clear and specific references to identifiable individuals in the community which qualify as the personal information of those individuals.

As the affected person expresses concern about disclosure of information relating to one specific individual in the community, I have carefully reviewed the information concerning this individual in the context of the circumstances as set out in both records. In my opinion, some of the information contained therein would appear to be personally directed at this individual, and I find that this information qualifies as his personal information in both Records 1 and 2. Other information, however, pertains very generally to his business activities, and I am not satisfied that this information can be categorized as personal information as defined in section 2(1) of the Act.

The appellant has indicated that he does not wish to pursue access to information which might qualify as personal information of individuals in the community, and this information is, therefore, not at issue. Accordingly, I have highlighted on the copies of the records I have provided to the Ministry with this order, the portions of the records which should not be disclosed to the appellant as they contain the personal information of individuals in the community.

As I have found that the remaining information in the records does not qualify as personal information, it is not necessary for me to address Issue B. Since no discretionary exemptions

were claimed for this information, and no mandatory exemptions apply, the remaining information in both records should be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose Records 1 and 2 to the appellant, subject to the severances of the personal information of certain individuals referred to in the records, within 35 days from the date of this order, and **not** earlier than the thirtieth (30th) day following the date of this order. I have attached a highlighted copy of the records with the copy of this order provided to the Ministry, which indicates the severances which should be made prior to the release of these records. The information which is highlighted should **not** be disclosed.
2. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 15, 1994