



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

ORDER M-536

Appeal M-9500141

The Corporation of the Township of Howick



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NATURE OF THE APPEAL:

The Corporation of the Township of Howick (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to By-law 37/93 (the By-law) which authorized the Township to enter into an Agreement of Purchase and Sale (the Agreement) for the sale of a piece of property in the Village of Gorrie. The requester also sought access to the Agreement. The Township provided the requester with a copy of the By-law. After notifying the purchasers of the property (the affected persons) who are named in the Agreement, and receiving their representations with respect to its release, the Township decided not to disclose it, claiming the following exemption contained in the Act:

- third party information - section 10(1)

The requester appealed this decision. In the course of the mediation of the appeal, the appellant indicated that he is interested only in the planning and zoning information contained in the Agreement. The parties agreed that the second clause in the centre of page one of the Agreement is the only portion which responds to this narrowed request and is, therefore, the sole information at issue.

A Notice of Inquiry was provided to the appellant, the Township and the affected persons. Although not claimed as an exemption by the Township, this office identified that the mandatory exemption provided by section 14 of the Act may apply to the information at issue.

Representations were received from all of the parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to financial transactions in which the individual has been involved. The Agreement contains the terms of purchase and sale as well as a description of the property and the names of the affected persons, identifying them as the purchasers. The clause which remains at issue also makes reference to the affected persons and describes a specific term of the Agreement for their purchase of land from the Township. I find, therefore, that the undisclosed clause which remains at issue in the Agreement contains information pertaining to financial transactions in which the affected persons have been involved. This information falls within the definition of personal information contained in the Act.

As noted above, this office identified the possible application of the mandatory exemption provided by section 14(1) of the Act. Section 14(1) is an exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 14(1)(f) of the Act. This section provides that the Township must refuse to disclose the personal information of another individual except if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

Following my independent review of the record and the representations of the parties, I find that the presumption against disclosure contained in section 14(3)(f) of the Act applies to the remaining information. This section reads:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, **financial history or activities**, or creditworthiness;
(emphasis added)

The information remaining at issue forms part of an Agreement for the purchase of land from the Township by the affected persons. I find that the Agreement itself, as well as the undisclosed portion which is at issue, contains information about the financial activities of the affected persons, specifically the terms and conditions for their purchase of a property from the Township. I also find that the release of this information would result in the disclosure of personal information which describes the financial activities of the affected persons within the meaning of the presumption contained in section 14(3)(f).

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls within one of the exceptions to the exemption under section 14(4) of the Act (which is not the case in this appeal) or where a finding is made that section 16 of the Act (the public interest override provision) applies to the personal information contained in the record.

The By-law which was disclosed to the appellant identifies the names of the purchasers but does not make reference to all of the terms of the Agreement. The appellant submits that persons who purchase public land should expect some of their personal information to be made public. Even if I were to find this to be a relevant consideration, it is not sufficient to override the presumption of an unjustified invasion under section 14(3)(f).

In order for section 16 of the Act to apply to the personal information contained in the record, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the record. Second, this interest must clearly outweigh the purpose of the invasion of privacy exemption.

The appellant submits that because the information at issue may be raised by him in a matter before the Ontario Municipal Board and in a legal proceeding which he has brought against the Township, there is a compelling public interest in its disclosure. The appellant further describes the circumstances surrounding his personal involvement in the Ontario Municipal Board proceeding and the legal action. I have not been provided with evidence to show that there is a **public** interest in the disclosure of the information. Accordingly, I find that section 16 of the Act does not apply in the circumstances of this appeal and that the personal information at issue is properly exempt from disclosure under section 14(1) of the Act.

Because I have found that section 14(1) applies to the information at issue, it is not necessary for me to consider the application of section 10(1) of the Act.

ORDER:

I uphold the decision of the Township not to disclose the information at issue.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 26, 1995