



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

## **ORDER M-636**

Appeal M\_9500419

Town of Gravenhurst



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## NATURE OF THE APPEAL:

The Town of Gravenhurst (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to a planned development project in the Town which had been the subject of a proceeding before the Ontario Municipal Board (the O.M.B.). The Town located a number of responsive records and granted access to five files in their entirety and parts of two others. Access was, however, denied to nine individual records contained in two files, either in whole or in part, pursuant to the following exemptions contained in the Act:

- solicitor-client privilege - section 12
- invasion of privacy - section 14

In addition, the Town indicated that the issue of access to Records 1, 2 and 3 was determined by the Commissioner's office in Orders M-162, M-291 and M-518 respectively. In these orders, the Town's decision not to disclose the majority of the information contained in the records was upheld. Those portions of the records which were ordered disclosed in Orders M-291 and M-518 have been disclosed to the requester in this appeal.

The requester appealed the Town's decision to deny access. During the mediation of the appeal, the Appeals Officer identified the possible application of the mandatory exemption provided by section 10 of the Act (third party information) to Records 8 and 9. A Notice of Inquiry was provided to the appellant, the Town and to three affected persons whose rights might be affected by the disclosure of the information contained in the records. Representations were received from the Town only.

## DISCUSSION:

### **RECORDS ALREADY ADJUDICATED**

As noted above, the issue of access to Records 1, 2 and 3 has already been determined by the Commissioner's office in Orders M-162, M-291 and M-518 respectively. The appellant has not made any representations as to why I should decide upon the issue of access to these records in a different manner than that expressed in the earlier orders. Accordingly, I find that as the issue of access to Records 1, 2 and 3 has already been determined, it is not necessary for me to revisit the issue.

### **SOLICITOR-CLIENT PRIVILEGE**

The Town claims the application of the solicitor-client privilege contained in section 12 of the Act to Records 4, 5, 6 and 7. This section consists of two branches, which provide the Town with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege;  
(Branch 1) and

2. a record which was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Town indicates that it is relying on Branch 1 of the section 12 exemption for Records 4, 5, 6 and 7. In order for a record to be subject to the common law solicitor-client privilege (Branch 1), the Town must provide evidence that the record satisfies either of the following tests:

1. (a) there is a written or oral communication, **and**  
(b) the communication must be of a confidential nature, **and**  
(c) the communication must be between a client (or his agent) and a legal advisor, **and**  
(d) the communication must be directly related to seeking, formulating or giving legal advice;

**OR**

2. the record was created or obtained especially for the lawyer's brief for existing or contemplated litigation.

I have reviewed Records 4, 5, 6 and 7 and the representations received from the Town and find that each is a confidential written communication between a legal advisor and client (the Town) which is directly related to the seeking or giving of legal advice. Accordingly, these records qualify for exemption under the first part of Branch 1 of the section 12 exemption.

### **INVASION OF PRIVACY**

The Town claims that section 14 applies to Records 8 and 9. These records consist of two letters addressed to one of the affected persons by his counsel and relate to certain legal issues surrounding his proposed development project in the Town. Copies of these letters were provided by the affected person to the Town.

Under section 2(1) of the Act, personal information is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the two records and find that they contain the personal information of the affected person including his address and information relating to financial transactions in which he has been involved. In addition, I find that the records qualify as the personal information of the affected person as they are "correspondence sent to the institution by the individual that is implicitly or explicitly of a private or confidential nature".

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. The only one of

these circumstances which could apply in this appeal is referred to in section 14(1)(f), which permits disclosure if it would not be an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the 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.

The Town submits that the considerations listed in sections 14(2)(e) (the individual to whom the information relates will be exposed unfairly to pecuniary or other harm) and 14(2)(h) (the personal information was supplied in confidence) are relevant factors in balancing the appellant's right of access with the affected person's right to privacy.

I find that none of the presumptions described in section 14(3) apply to these records. In addition, I have not been provided with sufficient evidence to find that section 14(2)(e) is a relevant consideration in the circumstances of this appeal. Section 14(2)(h) is a relevant factor which weighs in favour of privacy protection. The appellant has not raised any of the considerations found in section 14 which weigh in favour of the disclosure of the personal information of the affected person. As I have not been provided with any evidence which would support a finding that the disclosure of the personal information would not result in an unjustified invasion of the personal privacy of the affected person, I find that section 14(1) applies to exempt this information from disclosure.

In his letter of appeal, the appellant makes reference to the fact that the public interest favours the disclosure of the records as "they relate to matters of concern to all citizens". The subject matter of the records is a property development in the Town which has been opposed by the appellant and several other individuals. I have not been provided with any evidence that the public interest in the disclosure of these records is either compelling or sufficiently significant to outweigh the purpose of the exemption. Accordingly, I find that section 16 does not apply.

Because of the manner in which I have addressed the records above, it is not necessary for me to consider the application of section 10(1) of the Act.

#### ORDER:

I uphold the Town's decision.

Original signed by: \_\_\_\_\_

November 1, 1995

Donald Hale  
Inquiry Officer