



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

ORDER M-660

Appeal M_9500291

Town of Midland



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NATURE OF THE APPEAL:

The Town of Midland (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to building inspections and bylaw enforcement on six properties located in the Town. The requester was advised that one of the properties was located outside the Town limits and records relating to it are, accordingly, outside the scope of this appeal. In its decision letter, the Town advised the requester that access was denied to the responsive records, if they exist, pursuant to the following exemptions contained in the Act:

- endanger life or safety - section 8(1)(e)
- danger to safety or health - section 13
- invasion of privacy - section 14(1)

In addition, pursuant to section 14(5) of the Act, the Town refused to confirm or deny the existence of records responsive to the request. The requester appealed the decision to deny access and advised that he was no longer seeking any personal information which may be contained in the records.

A Notice of Inquiry was provided to the Town and the appellant. Representations were received from both parties.

PRELIMINARY ISSUE:

SHOULD THE APPELLANT BE PRECLUDED FROM MAKING REQUESTS

The Town submits that I should consider the application of the principles set forth in Order M-618 to the circumstances of this appeal. It argues that the appellant has a long history of making multiple requests and filing a large number of appeals. The Town has submitted evidence in support of its argument that the appellant ought to be precluded from making further requests and appeals in the same fashion as the appellant who was the subject of Order M-618.

In Order M-618, Commissioner Tom Wright set forth a number of factors to be considered when determining whether an individual's use of the Acts constituted an "abuse of process" which required curtailing. The order discusses the use of the Commissioner's power to control his own process as well as the power to limit an abuse of process which occurs at the request stage. Commissioner Wright held that, in the unique circumstances of that case, the appellant's course of conduct led him to the conclusion that this individual's use of the Acts constituted an abuse of process. Commissioner Wright outlined a number of factors which, taken together, led him to this conclusion. These included the sheer volume of requests, the nature and scope of the requests as well as the rate at which requests were made by the appellant in that case.

I cannot agree that the conduct of the appellant in the present appeal constitutes an "abuse of process" as contemplated by Commissioner Wright in Order M-618. I have not been presented with sufficient evidence to demonstrate that the present appellant has entered into a course of

conduct which is analogous to that of the appellant in Order M-618. In the present situation, the volume and rate of requests by the appellant is not on a scale approaching that of the appellant in Order M-618. Accordingly, I find that the actions of the appellant in the case before me cannot be characterized as an "abuse of process" and my consideration of the issues in this appeal will proceed.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. In my view, records of the nature requested, if they exist, would contain personal information which relates to the owners or occupiers of the properties in question. However, in the particular circumstances of this appeal, even if the personal identifiers of individuals were to be severed, it is reasonable to expect that the information contained in such records would still relate to an identifiable individual.

Section 14(5) of the Act states:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

A requester in a section 14(5) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 14(5), the Town is denying the requester the right to know whether a record exists, even when one does not. This section provides the Town with a significant discretionary power which I feel should be exercised only in rare cases.

In relying on this section, the Town must do more than merely indicate that the disclosure of the records would constitute an unjustified invasion of personal privacy. The Town must provide sufficient information and reasoning to satisfy me that disclosure of whether records exist would in itself convey information to the requester, the nature of which is such that its disclosure would constitute an unjustified invasion of personal privacy (Order P-339).

The Town states that confirming the existence of a record would result in the unjustified invasion of another individual's personal privacy. I do not agree. By simply confirming that records responsive to the request exist, the Town would not be compromising the privacy interests of any individual. In my view, the Town has failed to establish that disclosure of the mere existence of the requested records would result in an unjustified invasion of personal privacy, and I find that the requirements of section 14(5) have not been met. Accordingly, I find that section 14(5) does not apply in the circumstances of this appeal.

In order to dispose of this appeal, it is necessary for me to disclose that no records responsive to the request exist. As there are no records to which the exemptions claimed might apply, I need not consider the other issues raised in this appeal.

ORDER:

1. I do not uphold the decision of the Town to refuse to confirm or deny the existence of the records.
2. In this order, I have disclosed the fact that no responsive records exist. I have released this order to the Town in advance of the appellant in order to provide the Town with an opportunity to review this order and determine whether to apply for judicial review.
3. If I have not been served with a Notice of Application for Judicial Review within fifteen (15) days of the date of this order, I will release this order to the appellant within five (5) days of the expiration of the 15-day period.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ December 6, 1995