



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

# **ORDER P-1082**

**Appeal P-9500495**

**Ministry of Municipal Affairs and Housing**



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:

In March 1995, the appellant wrote a letter to the Minister of Municipal Affairs and Housing alleging a potential conflict of interest in connection with the Toronto Island Land Trust. The allegations pertained to a particular individual. This individual (the requester) submitted a request for a copy of the letter under the Freedom of Information and Protection of Privacy Act (the Act). The request was sent to the Ministry of Municipal Affairs and Housing (the Ministry).

The Ministry notified the appellant that it had received a request for his letter, pursuant to section 28(1)(b) of the Act. This section requires the Ministry to give such notice before granting access to a record “that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of section 21(1)(f)”.

In response to this notice, the appellant wrote to the Ministry and indicated that he objects to disclosure of his letter. Despite this, the Ministry decided to grant partial access to the letter, deleting all references to individuals other than the requester and the appellant. The Ministry sent a notice to this effect to the appellant, and advised him that this disclosure would take place unless an appeal was filed within 30 days.

In response to the Ministry’s decision to disclose part of the letter, the appellant filed an appeal with this office.

The Ministry also advised the requester of its decision to grant partial access. However, the Ministry’s letter did not advise the requester of his right to appeal the Ministry’s decision to withhold parts of the record, nor did it indicate the exemptions claimed nor the reasons why they should apply. In this respect, the Ministry did not comply with the requirements of section 29(3) of the Act, which requires both of these things to be done when access is denied in a decision made pursuant to section 28. The requester was therefore not in possession of the information contemplated by the Act where access is being denied, and his ability to assess the situation was limited as a result. It is, therefore, not surprising that in these circumstances, the requester did not file an appeal.

It is important to note that this appeal arises from the Ministry’s decision **to grant access** to part of the record, and the appellant’s objection to the disclosure of this information. Accordingly, **only the information which the Ministry decided to disclose is under consideration in this order**. The information which the Ministry decided to sever would only be at issue if the requester had filed an appeal objecting to the severances.

As I have noted above, the Ministry did not advise the requester of its reasons for denying access to the parts of the record it intended to sever, nor of his right to appeal that aspect of the decision. Although it is unfortunate to divide up the consideration of this matter, I must do so for jurisdictional reasons. However, under the circumstances, I will order that the requester’s right to appeal the Ministry’s severances is preserved for 30 days after the date of this order.

In order to assist the requester in deciding whether or not to file such an appeal, I will now indicate that the severed information pertains to the requester’s wife and his two children, and that the Ministry’s

basis for withholding it is that disclosure of this information would be an unjustified invasion of their personal privacy. I note in passing that, if the requester obtains the written consent of his wife and children to the disclosure of this information, and forwards this to the Ministry, it would be open to the Ministry to revise its decision with respect to that information, whether or not the requester has filed an appeal. The requester could also consider whether he is able to rely on section 66(c) with respect to the information pertaining to his children. That section allows a person having lawful custody of a child under the age of sixteen to exercise that child's rights under the Act.

I will now resume my description of the history of this matter. The Commissioner's office sent a Notice of Inquiry to the appellant, the Ministry and the requester. The appellant's letter to the Ministry objecting to disclosure indicated that, in the appellant's view, disclosure of the letter would be an unjustified invasion of the appellant's personal privacy. On this basis, the Notice of Inquiry raised the possible application of the "invasion of privacy" exemptions in sections 21(1) and 49(b) of the Act. Representations were received from all three parties.

Accordingly, the issue which I must now decide is whether the exemptions provided by sections 21(1) and 49(b) apply to the information **which the Ministry decided to release**. The only record to be considered is the appellant's letter to the Minister of Municipal Affairs.

## **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 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 the circumstances of this appeal, items (e) and (g) in the definition of "personal information" under section 2(1) are particularly important. These items indicate that an individual's personal information includes:

- (e) the personal opinions or views of the individual **except where they relate to another individual**,
- (g) **the views or opinions of another individual** about the individual.  
[emphases added]

The combined effect of items (e) and (g) is that the views or opinions of individual "x" about individual "y" are the personal information of individual "y" **only**. They are **not** the personal information of individual "x" (Order P-972).

I have reviewed the parts of the letter which are at issue (i.e. the parts the Ministry has decided to disclose) to determine whether they constitute personal information and, if so, to whom the personal

information relates. In my view, the appellant's home address, and the fact that he is the author of the letter, constitute his personal information. The balance of the personal information in the parts of the letter which are at issue consists of the appellant's views and opinions about the requester. I find that these passages constitute the requester's personal information only. In summary, the record contains personal information pertaining to the appellant and the requester.

In this appeal, the Notice of Inquiry raised the possible application of the "invasion of privacy" exemption in section 21(1). However, this exemption can only apply to records which do **not** contain the requester's personal information. As I have found that the record does contain the requester's personal information, section 21(1) is not applicable (Order M-352).

However, under section 49(b) of the Act, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. As noted, the record does contain the personal information of the requester and other individuals, and accordingly, I will consider whether section 49(b) applies.

The only information whose disclosure can be an "unjustified invasion of personal privacy" under section 49(b) is personal information pertaining to individuals **other than the requester**. Above, I found that the only information in that category, in the parts of the letter which are at issue, consist of the appellant's identity as the author of the letter, and his home address. Therefore, the remaining passages at issue (i.e. the allegations about the requester) are not exempt and should be disclosed.

I will now consider whether the appellant's name and home address are exempt under section 49(b).

In this situation, sections 21(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 21(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 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

In his letter of appeal and his representations, the appellant devotes considerable attention to the fact that his identity as the author of the letter was "leaked" to the requester. I interpret this as an argument by the appellant to the effect that this leak is a "relevant circumstance" pertaining to disclosure of the appellant's name, within the meaning of section 21(2).

The alleged leak was the subject of an investigation by the Compliance Department of this agency, to determine whether any improper disclosure took place. In my view, the Compliance investigation was

the proper forum for discussion of this issue. The leak was not substantiated by the Compliance Department's investigation. In any event, the evidence before me is not sufficient to justify a conclusion that a leak occurred. For these reasons, I do not consider this alleged leak to be a "relevant circumstance" in deciding whether the appellant's name should be severed from the letter.

In his representations, the appellant indicates that, when he wrote the letter, he "truly believed it would be strictly confidential". In a similar vein, the appellant's letter to the Ministry, opposing disclosure at the request stage, states that it is a "... sorry day when a private citizen cannot write to his elected representative or a provincial minister without having that letter disclosed, or being threatened with its disclosure". In my view, both these comments raise the possible application of the factor in section 21(2)(h) (information supplied in confidence) to the appellant's name and home address. I find that this factor applies to the appellant's home address. However, as the appellant is identified in the request, by name, as the author of the letter, there would be little utility in applying this factor to his name. Therefore, I find that section 21(2)(h) does not apply to the appellant's name.

The appellant's letter to the Ministry also states that he "has every reason to believe" that the fact of his writing the letter "will be used against me in a most detrimental way". This suggests the possible application of section 21(2)(e) (unfair exposure to pecuniary or other harm). In my view, this statement has not been substantiated, and I find that the application of this section has not been established.

In summary, none of the presumptions in section 21(3) have been raised by the appellant and I find that none of them apply. In my view, the alleged leak is not a factor which has a bearing on the issue of whether access should be granted to the appellant's name and home address. I find that the factor favouring non-disclosure in section 21(2)(h) applies to the appellant's home address. I also find that the application of section 21(2)(e) has not been established.

Therefore, I find that disclosure of the appellant's home address would be an unjustified invasion of his personal privacy and the exemption in section 49(b) applies to it. In the absence of any applicable factors favouring privacy protection with respect to the appellant's name, I find that the exemption does not apply to that information. In addition, because the remaining information at issue is the requester's personal information **only**, it is also not exempt under section 49(b).

As no other discretionary exemptions have been claimed for the information at issue which is not exempt under section 49(b), and no mandatory exemption applies, it should be disclosed.

Before leaving this discussion, however, there is one additional matter which I would like to address. This is the appellant's statement, quoted above, that it is a "sorry day" when he cannot write to his MPP or a member of Cabinet without threat of the information being disclosed. It appears that this statement was intended to prevent disclosure of the information about the requester in the letter, and the fact that the appellant provided it.

I have already considered this argument with respect to the appellants' name in my discussion of section 21(2)(h), above. However, with respect to the allegations the appellant made about the requester in the

letter, I would like to underline the fact that section 1(b) identifies the following as one of the purposes of the Act:

to protect the privacy of individuals with respect to personal information about themselves held by institutions **and to provide individuals with a right of access to that information.** [emphasis added]

It is no accident that item (g) of the definition of personal information, in section 2(1) of the Act (previously quoted in this order), identifies the views or opinions of others about an individual as the personal information of the latter, i.e. **they are the personal information of the individual to whom the views or opinions relate.** For this reason, the appellant should understand that it is not realistic to assume, when making serious allegations about an individual in a letter to a public official, that the information will necessarily be withheld from the individual who is the subject of the allegations.

### **ORDER:**

1. The requester may file an appeal of the Ministry's decision to deny access to the information about his wife and children contained in the record by advising the Commissioner's office, in writing, of his desire to appeal this decision. This letter is to be sent to my attention at the Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Toronto, Ontario, Suite 1700, M5S 2V1. It must be received at this office by the close of business on January 14, 1996.
2. I order the Ministry to disclose the record to the requester, except the passages highlighted in yellow on the copy of the record which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day after the date of this order. The highlighted passages, which consist of information about the requester's wife and children (which the Ministry decided not to disclose) and the appellant's home address, should **not** be disclosed.

Original signed by: \_\_\_\_\_  
John Higgins

December 15, 1995

Inquiry Officer