



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

ORDER P-1111

Appeal P-9500550

Ministry of Natural Resources



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>

BACKGROUND:

On May 3, 1995, the requester made an informal request to the Chatham office of the Ministry of Natural Resources (the Ministry) for the following documents pertaining to recent dock work completed by another named individual (who is the appellant in this appeal):

- application to do work on shorelines
- application for work permit
- evidence of notification
- site plans and drawings
- Ministry approval.

At that time, the Ministry contacted the appellant for his approval to release the information. He declined to give his permission. The Ministry then advised the requester that he would have to make a “formal” access request in accordance with the Freedom of Information and Protection of Privacy Act (the Act). He did so, and it is this request which forms the subject of this appeal.

The request, submitted pursuant to the Act, was identical to the one submitted on May 3, 1995. The request was submitted on the letterhead of an association, and indicated that the association was in the process of reviewing the appellant’s dock work.

Under section 28 of the Act, the Ministry gave “formal” notice of the request to the appellant, indicating that, in its view, the exemption in section 17(1) (third party information) was not applicable, and that it was considering disclosure of the records. In sending the section 28 notice to the appellant, the Ministry noted that he had already indicated his objection to disclosure of the records.

The Ministry decided to grant partial access, and advised the requester and the appellant to that effect. The Ministry indicated that some sections of the records would be withheld under section 21 of the Act (invasion of privacy). The withheld portions of the records appear in Records 1, 4, 6, 7, 9, 10 and 11. The information consists of the appellant’s name, home and business addresses, home and business telephone numbers, and signature. Record 11 also contains the names and addresses of two other individuals, and this information has also been withheld. The Ministry’s letter to the appellant advised that, unless an appeal was filed by the appellant by a specified date, the remainder of the records would be disclosed.

After receiving this letter from the Ministry, the appellant filed an appeal with the Commissioner’s office, objecting to this proposed disclosure. In his letter of appeal, the appellant stated that he had contacted the association and was advised that it was not reviewing his dock work. He alleged that the request was made under false pretenses and should, therefore, be refused on that ground. This raises a preliminary issue which I will address below.

A Notice of Inquiry was sent to the requester, the appellant and the Ministry. In response to the notice, the Ministry and the requester submitted representations.

It is important to note that this appeal arises from the Ministry’s decision **to grant access** to parts of the records, and the appellant’s objection to the disclosure of this information. The Ministry did not advise the requester of his right to appeal the Ministry’s decision to withhold some

information from the records (as described above), and the requester did not appeal this decision. 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.

During the Inquiry stage, the requester indicated that he was not interested in receiving Records 1, 2 and 3. They are, therefore, no longer at issue in this appeal and the Ministry should not disclose them to the requester. The remaining records and parts of records at issue (which I will identify by both Record number and corresponding page numbers) consist of the following:

- covering letter from the Chatham Area Supervisor of the Ministry regarding a Work Permit, with a copy of the Work Permit attached (Record 4 - pages 5 - 8)
- Figures 1 and 2 consisting of different views of the dock (Record 5 - pages 9 - 10)
- Application for Work Permit (Record 6 - pages 11 - 12)
- facsimile to a Lands Officer at the Ministry (Record 7 - page 13)
- photographs of dock area (Record 8 - pages 14 - 15)
- letter to Lands Officer regarding dock repairs (Record 9 - page 16)
- letter from Chatham Area Supervisor regarding proposed dock (Record 10 - page 17)
- Application for Work Permit - Evidence of Notification forms, postal receipts and front cover of envelopes (Record 11 - pages 18 - 20).

A review of the records indicated that section 21 could apply to portions of the records for which it was not claimed. Since section 21 is a mandatory exemption, the Notice of Inquiry raised this section, and the parties were asked for their submissions regarding the possibility of its application to the records at issue. Neither the Ministry nor the requester addressed this section in their representations. Despite the absence of representations on this issue, I will consider its application in my discussion below.

PRELIMINARY MATTER:

As I indicated above, the request was written on the letterhead of an association. The requester appeared to be representing the association in this request. In his letter of appeal, however, the appellant states that the requester is acting without the authority of the association, and that the request should be denied on this basis.

In his representations, the requester challenges this allegation, and outlines his responsibilities with the association. He argues further that his right to access to information under the Act is not dependent on his position with the association.

In my view, unless the requester purports to be acting as an agent for an individual and is requesting personal information about that individual, his identity and/or motive is not a factor which will be considered in determining whether a valid request has been made and whether access should be granted in the circumstances of this appeal. In this case, the manner in which the requester submitted his request is not relevant to the issues to be determined.

DISCUSSION:

THIRD PARTY INFORMATION

Section 17(1) of the Act provides that:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

In this case, for a record to qualify for exemption under section 17(1)(a), (b) or (c) the appellant must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur.

[Order 36]

I will begin my discussion with part two of the test.

In its representations, the Ministry indicates that the records at issue relate to an application by the appellant for approval under the Public Lands Act for dock repairs. The Ministry takes the position that the information in the records at issue could not have been provided in confidence.

In this regard, the Ministry refers to a statement on the Work Permit application (Record 6 - page 11) which provides that:

[T]he information obtained on this application is a public record which is accessible upon request.

The Ministry concludes that because of this statement, any information relating to the work to be done was supplied on the explicit understanding that it would be available to the public.

The Application for Work Permit is a multi-part form designed to obtain specific information about the applicant, the proposed site on which work is to be done and the type of work proposed to be done. The form contains a number of cautions to applicants, one of which is the statement referred to above. The form also lists the types of information and/or documents which are to be attached in order for the application to be processed, such as sketches or drawings and evidence that notice of the proposed work has been provided to at least the two immediately adjacent neighbours.

While many of the records at issue would fall within the types of information referred to in the application (Records 5, 6, 8, 11 and part of Record 4), it is my view that correspondence between the Ministry and an individual would not. However, I have no evidence before me that the appellant had any expectation that his correspondence with the Ministry was provided or would be held in confidence. Nor is this expectation apparent on the face of the records.

Accordingly, I find that the information in the records was not provided in confidence as contemplated in this part, and the second part of the test has not been met. I will now turn my discussion to part three of the test.

Even if I were to find that the information was provided in confidence, the appellant did not submit representations which address this issue, and there is nothing on the face of the records which would lead me to conclude that there is any reasonable expectation that the harms specified in sections 17(1)(a), (b) or (c) might possibly apply. Accordingly, the third part of the test has also not been met.

Since it is necessary to satisfy **all three parts** of the test in order to qualify for exemption under section 17(1), I find that the information at issue is not exempt under this section.

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.

As I indicated above, the name, addresses and telephone numbers of the appellant and the names and addresses of two other individuals have been withheld under section 21(1), and are not at issue in this appeal. I note, however, that the requester specifically identified the appellant in his request.

I find that the portions of the following records which are at issue contain the personal information of the appellant and/or other individuals: Record 4 - page 5, and Records 7, 9 and 10. None of these records contain the personal information of the requester.

The remaining information contained in the portions of the records at issue relates to work performed on the property and does not, in my view, qualify as personal information (Order 23). This information is found in Record 4 - pages 6 - 8, and Records 5, 6, 8 and 11. As no other exemptions have been claimed for these records and parts of records, they should be disclosed to the requester.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, sections 21(1)(c) and (f) of the Act read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(c)

As I noted above, the Ministry indicates in its representations that information obtained on the application is a public record which is accessible upon request. However, I indicated that while many of the records at issue would fall within the types of information referred to in the application (Records 5, 6, 8, 11 and part of Record 4, which I have already found not to be exempt), I am not persuaded that correspondence between the Ministry and an individual would also be caught.

In my view, the caution as set out in the application form can only apply to the types of information specifically requested in the form. It cannot, thereafter be extended to any other information on file pertaining to the application as such an interpretation would be inconsistent with the privacy protection principles of the Act.

Accordingly, I find that the exception to the section 21 exemption found in section 21(1)(c) does not apply to the remaining records in the circumstances of this appeal.

Section 21(1)(f)

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to

consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2).

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 21 exemption.

None of the parties have submitted representations specifically addressing the application of this section to the remaining portions of the records at issue, despite being invited to do so. In my view, I have not been provided with sufficient information from the representations which were submitted to conclude that any factors which favour disclosure of the remaining portions of records are relevant in the circumstances of this appeal.

Section 21(4) does not apply to any information in the records. Nor has any party submitted that section 23 of the Act applies to this personal information.

In the absence of any factors favouring disclosure, therefore, I find that the mandatory exemption provided by section 21(1) of the Act applies to the personal information contained in Record 4 - page 5, and Records 7, 9 and 10.

ORDER:

1. I uphold the Ministry's decision to disclose Record 4 - pages 6 - 8, and Records 5, 6, 8 and 11 to the requester, and I order the Ministry to disclose these records by sending copies to the requester on or before **February 29, 1996**.
2. I do not uphold the Ministry's decision to disclose Record 4 - page 5, and Records 7, 9 and 10. These records are **not** to be disclosed to the requester.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the requester pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

January 30, 1996