



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

# **ORDER M-911**

**Appeal M\_9600366**

**Township of Georgian Bay**



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## **NATURE OF THE APPEAL:**

The Township of Georgian Bay (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the appellant's building permit application and plans for a cottage on an identified lot.

Pursuant to section 21 of the Act, the Township notified the appellant of the request. The appellant objected to the release of the records, claiming that they were exempt from disclosure pursuant to section 10(1) of the Act (third party information). The appellant also stated that he had contacted the designer of the plans who advised that he also objected to disclosure of the copyright plans without compensation. Finally the appellant reiterated that the plans were provided to the Township "under copyright".

The Township then issued a decision granting access to the building permit application. The Township made the following decision with respect to the plans:

It has been determined that it would not be reasonable or practical for us to reproduce a copy of the plans you have requested by nature of their size and length. In addition, the plans requested are protected by Copyright Laws and certain restrictions apply to their release. Alternatively, you may arrange a time to attend the office to examine these documents. At that time if you wish a portion of the plans reproduced and it is determined that it is practical for us to reproduce that portion, you will be provided with the same.

The appellant appealed this decision claiming that the records qualified for exemption pursuant to section 10(1) of the Act.

A Notice of Inquiry was provided to the Township, the appellant, the original requester and the company that designed the plans (the designer). In addition, as it appeared that the building permit application may contain the personal information of the appellant, the Appeals Officer also raised the possible application of section 14 of the Act. Representations were received from the Township, the appellant and the designer.

## **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. I have reviewed the information contained in the records and I find that the building permit application contains the personal information of the appellant and that the plans do not contain any personal information. Therefore, the plans cannot be subject to section 14(1) of the Act.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which states:

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

If none of the presumptions contained in section 14(3) apply, the Township must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Township submits that its policy is, and always has been, that building permit applications are public documents and that the information contained therein is publicly available.

The appellant submits that, the records at issue should not be disclosed as he and his family have already been exposed to emotional and physical harm and, therefore, disclosure of the records would expose him unfairly to pecuniary or other harm (section 14(2)(e)). In addition, in his representations to the Township, he stated that he supplied the information to the Township in confidence (section 14(2)(h)).

Having carefully reviewed the representations and the records, I have made the following findings:

- (1) While I recognize the appellant's concerns, I have not been provided with any substantial basis for the assertions that disclosure of the information contained in the building permit application would expose him unfairly to pecuniary or other harm. Therefore I find that section 14(2)(e) is not a relevant consideration for this information. In this regard, I note that the appellant has chosen to construct his cottage in close proximity to the very individuals who he maintains may expose him to harm.
- (2) Given the Township's position that information contained in building permit applications is publicly available, it is my view that the appellant's assertion that he supplied the information to the Township in confidence is not reasonable and, therefore, section 14(2)(h) does not apply.

- (3) The Township's practice, followed in many municipalities, has been to make building permit applications available to any member of the public upon request and is, in my view, a relevant circumstance favouring disclosure.
- (4) Based on a consideration of all of the circumstances of this case, I find that disclosure of the personal information in the building permit application would not constitute an unjustified invasion of the personal privacy of the appellant and that the record is not exempt from disclosure under section 14 of the Act.

### **THIRD PARTY INFORMATION**

The appellant claims that section 10(1) of the Act applies to the building permit application and the plans. The Township has submitted that its position is to disclose the records to the original requester and, as previously indicated, that it considers building permit applications to be publicly available records. The designer submits that it does not believe that the plans are subject to the section 10(1) exemption claim.

Section 10(1) of the Act states, in part:

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, if 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;

In this case, because the Township is prepared to disclose the records, it is the appellant who must establish the application of all the elements of the exemption.

### **Type of Information**

As stated earlier, the records are a building permit application and plans for a cottage. In my view, the building permit application contains no information of the type set out in section 10(1) of the Act. As this aspect of the exemption has not been satisfied, section 10(1)(a) cannot apply. Therefore, the building permit application should be disclosed to the original requester.

However, I find that the information in the plans constitutes "technical" information in that it is information belonging to an organized field of knowledge which falls under the general

categories of applied sciences or mechanical arts. The plans were prepared by a professional in the field and describe the design of the cottage. The first element of the section 10(1) exemption has been satisfied with respect to the plans.

### **Supplied in Confidence**

The appellant must next establish that the plans were **supplied** to the Township and second, that they were supplied **in confidence**, either implicitly or explicitly.

It is clear that the plans were supplied to the Township by the appellant as part of the building application process.

I must now determine if this information was supplied to the Township in confidence, either implicitly or explicitly.

In his representations to this office, the appellant has not addressed this issue. However, in his representations to the Township, he submitted that the records, and in particular the plans, were supplied specifically in confidence for the purposes of the Township's review of his building permit application. He also stated that, as the plans were subject to copyright, they were provided on the understanding that they were to remain confidential. The appellant further submits that he would only provide such information on the understanding of confidentiality and that he would not have provided the plans to the Township without this understanding.

In Order M-169, former Inquiry Officer Holly Big Canoe made the following comments with respect to the issue of confidentiality in section 10(1) of the Act:

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- (1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.
- (3) Not otherwise disclosed or available from sources to which the public has access.

- (4) Prepared for a purpose which would not entail disclosure.

[Order P-561]

Apart from his statement that the plans were supplied to the Township in confidence, the appellant has provided no evidence in support of this assertion. The Township indicates that the plans were not stamped "Confidential" or otherwise noted as having been provided in confidence. The Township has decided to release the plans.

Having carefully considered the representations of the appellant and the Township, I find that the appellant did not hold a reasonable expectation that the record was supplied to the Township either explicitly or implicitly in confidence. Therefore, the second element of section 10(1) of the Act has not been established.

With respect to the issue of copyright, as raised by the Township in its decision letter and the appellant, I refer to the findings of Commissioner Tom Wright, which I adopt, in Order M-29 where he dealt with the issue of copyright and its relationship to a request for access to information under the Act. He stated:

I think that it is important to note that providing **access** to information under the Municipal Freedom of Information and Protection of Privacy Act does not constitute an infringement of copyright. Specifically, sections 27(2)(i) and (j) of the Copyright Act provide that disclosure of information pursuant to the federal Access to Information Act or any like Act of the legislature of a province does not constitute an infringement of copyright.

Sections 27(2)(i) and (j) of the Copyright Act read as follows:

The following acts do not constitute an infringement of copyright:

- (i) the disclosure, pursuant to the Access to Information Act, of a record within the meaning of that Act, or the disclosure, pursuant to any like Act of the legislature of a province, of like material;
- (j) the disclosure, pursuant to the Privacy Act, of personal information within the meaning of that Act, or the disclosure, pursuant to any like Act of the legislature of a province, of like information;

Thus, even if the information in the plans may be subject to copyright, **disclosure** of it pursuant to the Act is not an infringement of copyright.

In summary, I have found that the plans were not supplied by the appellant to the Township either explicitly or implicitly in confidence. As all three aspects of the section 10(1) exemption must be met, I find that it has no application to the building plans.

**ORDER:**

1. I uphold the decision of the Township to disclose the building permit application and the plans to the original requester.
2. I order the Township to disclose the building permit application to the original requester in its entirety by **April 23, 1997** but not before **April 18, 1997**.
3. I order the Township to contact the original requester by **April 23, 1997** but not before **April 18, 1997**, to arrange a time for reviewing the plans and discussing whatever arrangements may be necessary to provide for copies of the plans if the original requester desires copies.
4. In order to verify compliance with this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed and made available to the original requester pursuant to Provisions 2 and 3.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ March 19, 1997