



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1472

Appeal P_9700132

Ministry of Natural Resources



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Natural Resources (the Ministry). The request was for access to all records relating to a property owned by the appellant and her husband.

The Ministry responded by providing access to approximately 15 pages of records. Access was denied to a further eight records pursuant to the following exemptions:

- advice or recommendations - section 13(1)
- law enforcement - sections 14(1)(d) and 14(2)(a)
- invasion of privacy - sections 21 and 49(b)

The appellant appealed the decision to deny access.

The Ministry indicated that Record 9 was not responsive to the request and was in the file by mistake. The appellant agreed that this record is no longer at issue in the appeal.

During mediation, the appellant provided written consent from her husband to disclose Record 2 to her. This record was disclosed and is no longer at issue in the appeal.

After this appeal was opened, the Ministry discovered a number of photographs responsive to the request. A new decision letter was provided granting access to 15 photographs. Access was denied to nine photographs.

This office sent a Notice of Inquiry to the appellant and the Ministry. Representations were received from the Ministry only.

RECORDS:

The records at issue, as numbered by the Ministry, consist of:

1. Handwritten note to file, 1989.
3. Record of verbal transaction, 1990
4. Record of verbal transaction, 1990 and 3 photos.
5. Record of verbal transaction, 1991 and 1 photo.
6. Inspection report, 1991 and 5 photos.
7. Letter to the Ministry from an individual, 1991.
8. Letter to an individual from the Ministry, 1991.

DISCUSSION:

PERSONAL INFORMATION/DISCRETION TO REFUSE THE APPELLANT'S OWN INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. Having reviewed the written records, I find that they contain the personal information of the appellant and another identifiable individual. The photographs, however, do not contain information about any identifiable individuals.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the institution has the discretion to deny access to an individual’s own personal information in instances where the exemptions in sections 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

LAW ENFORCEMENT

The Ministry claims that Record 6 is exempt under section 14(2)(a) of the Act. In order for a record to qualify for exemption under section 14(2)(a), the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

In order to qualify as a report, the record must go beyond mere statement of facts. It should summarize the investigation, make findings of fact and draw conclusions about the validity of the complaint.

Record 6 relates to the Ministry’s investigation of a complaint of illegal filling at the appellant’s property. At the time of the investigation, the Ministry was responsible for the Public Lands Act, which regulated activities such as filling on Crown lands and shore lands, and for enforcement of the Fisheries Act. Record 6 was prepared by a Ministry employee responsible for the enforcement of that legislation. The report summarizes the investigations to date, makes certain findings of fact and, based on these facts, reaches a conclusion. Accordingly, in my view, Record 6, including the photographs, meets all the requirements of section 14(2)(a) and is exempt in its entirety.

As I have found that Record 6 is exempt under section 14(2)(a) of the Act, it is not necessary for me to consider the application of section 13 to it.

The Ministry claims that section 14(1)(d) of the Act applies to Records 1 and 5. This section states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

The Ministry submits that Records 1 and 5 comprise complaints made by another individual about alleged illegal activity by the appellant. It argues that the individual made the complaints with the expectation that the source of the complaint would be kept confidential. The Ministry indicates that its practice is not to disclose the source of complaints of alleged illegal activity which trigger investigation, in order to encourage concerned citizens to report suspected illegal activity without fear of harassment.

The Ministry indicates that the matter was investigated to determine whether charges relating to the destruction of fish habitat should be laid under the Fisheries Act, or whether charges under the Public Lands Act relating to filling of shore lands without a work permit should be laid. Fines of up to \$100,000 pursuant to section 78 of the Fisheries Act or subsection 14(1)(6) of the Public Lands Act may be levied.

Although the Ministry decided not to proceed with charges in this instance, the matter was investigated following the complaints which are contained in Records 1 and 5. I am satisfied that Records 1 and 5 concern alleged infractions of the Fisheries Act and the Public Lands Act. I find, therefore, that they relate to a law enforcement matter within the meaning of section 14(1)(d).

I have reviewed the record and representations of the Ministry and find that the disclosure of Records 1 and 5, with the exception of the photograph, would reveal the identity of a confidential source of information in respect of a law enforcement matter. Accordingly, I find that these records are exempt under section 14(1)(d) of the Act.

INVASION OF PRIVACY

Records 3, 4, 7 and 8, with the exception of the photographs attached to Record 4, each contain the personal information of the appellant and another identifiable individual.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other identifiable individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the appellant access to that information. On appeal, I must be

satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy.

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.

In my view, section 21(2)(h) is a relevant consideration in the circumstances of this appeal. This section states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information has been supplied by the individual to whom the information relates in confidence.

In weighing the appellant's interests in the disclosure of the records against the factors favouring privacy protection, I find that the factor favouring non_disclosure is more compelling. Accordingly, I find that disclosure of Records 3, 4, 7 and 8, with the exception of the photographs, would constitute an unjustified invasion of the personal privacy of another individual. These records are properly exempt under section 49(b) of the Act. The photographs attached to Record 4 do not contain personal information about an identifiable individual and should be disclosed to the appellant.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1, 3, 4, 5, 6, 7 and 8, with the exception of the photographs attached to Records 4 and 5.
2. I order the Ministry to disclose the photographs attached to Records 4 and 5 to the appellant by sending her a copy by **November 17, 1997**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the photographs which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

October 27, 1997