



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-1524

Appeal P-9700239

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

A member of the Board of a non-profit housing co-operative (the Co-op) submitted a request to the Ministry of Municipal Affairs and Housing (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act). The requester wanted a copy of an August 22, 1996 letter sent to the Minister by a named Member of Provincial Parliament (the MPP). The Ministry notified the MPP, pursuant to section 28 of the Act, as a person whose interest might be affected by disclosure of the letter. The MPP objected to disclosure on the basis that a letter from him directly to the Minister fell outside the jurisdiction of the Act. The Ministry responded that the letter was Ministry correspondence and not a constituency record, and therefore fell under the jurisdiction of the Act, and advised the MPP of his right to appeal this decision to the Information and Privacy Commissioner. The MPP did not appeal, and the Ministry provided the requester with partial access to the record. The remaining portions were denied on the basis of the following exemption claims:

- invasion of privacy - sections 21 and 49(b)

The Ministry then received a second request for access to the same record from a lawyer representing the Co-op Board. The Ministry responded by suggesting that “since you are requesting the same letter on behalf of the same Board it would be more beneficial for you timewise to appeal to the IPC under [the first request]”. The second requester (now the appellant), appealed the original decision on that basis.

A Notice of Inquiry was provided to the appellant, the Ministry, the MPP, and an organization whose interests might be affected by the outcome of the appeal (the affected party). Representations were received from the Ministry only.

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.

The information severed from the first page of the record consists of allegations and concerns purportedly raised by members of the affected party about two members of the Co-op Board, and communicated to the Ministry by the MPP.

The Ministry submits that one statement contained in this severance consists of the views and opinions of the MPP, and should be considered his personal information. I disagree. It is unclear whether this statement is properly considered to represent the views and opinions of the MPP, or whether he is simply acting as a conduit for the affected party. Either way, in my view, these views and opinions are about one of the Board members, which makes it the personal information of that individual, not the MPP. Also, it has been well established in numerous previous orders that opinions and views expressed by an individual acting in a professional capacity do not constitute that individual’s personal information. In this case, the MPP was acting in his professional capacity as an elected official and opposition housing critic, and I find the record does not contain his personal information.

I find that the information severed from page one of the record is the personal information of the two Board members only.

The information severed from page two consists of comments made by the MPP about the situation at the Co-op, and suggestions as to how the matter should be handled by the Ministry. Again, I find that none of these severances contain the personal information of the MPP, nor do they contain the personal information of any other identifiable individual.

The only personal information contained in the record is the personal information of the two Board members severed from page one. The Board, as represented by its lawyer, is the appellant. While it is clear that the appellant represents the collective interests of the Board, and thus indirectly represents the two Board members in their official capacities, he has not established that he represents their individual personal interests. The appellant was given a number of opportunities by this office to confirm that these two Board members consented to disclosure of their personal information to him. To date, he has not done so. In the absence of consent, I find that disclosure of this information would constitute an unjustified invasion of the personal privacy of these two Board members under section 21 of the Act.

In its representations, the Ministry states that it would be prepared to disclose this information with consent. In my view, should the proper consent be obtained, the exception to the mandatory exemption provided by section 21(1)(a) would apply, and the severed information would no longer qualify for exemption. I have included a provision in this order to cover the possibility that consent is obtained.

ORDER:

1. I order the Ministry to disclose the remaining portions of page two of the record to the appellant by sending him a copy no later than **March 4, 1998** but not before **February 27, 1998**.
2. I uphold the Ministry's decision not to disclose the remaining portions of page one of the record.
3. Should the appellant provide the Ministry with the consent(s) of either or both of the Board members whose personal information is contained on page one of the record, I order the Ministry to disclose the corresponding severed information to the appellant within five (5) days of receipt of the consent(s).
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, and any severed information disclosed pursuant to Provision 3.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ January 29, 1998