



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

ORDER PO-1667

Appeal PA-980316-1

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

The appellant 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) for access to all records, including notes and written communications relating to the file of a named individual and his family maintained by the Nipissing and Parry Sound Districts Housing Authority or by its Property Manager. The request also sought access to the reasons for any enforcement action taken, or alternatively the reasons why no enforcement action was taken.

The Ministry located approximately 190 pages of records and denied access to all of them pursuant to the exemptions provided by section 21(1) (invasion of privacy) of the Act.

The appellant appealed the Ministry's decision to deny access to the records under section 21(1) of the Act. In his appeal, the appellant also raised the application of section 23 of the Act, the so-called public interest override.

During mediation, the appellant confirmed that he was only seeking access to information about actions taken and/or decisions made in response to his complaint regarding the named individual (the affected person).

I sent a Notice of Inquiry to the Ministry, the appellant and the affected person. Representations were received from the Ministry and the affected person.

RECORDS:

As a result of discussions during mediation, it was determined that the information which the appellant is seeking is contained in a two-page report which indicates that an investigation was conducted, the particulars of the investigation and the conclusion reached. The appellant and the Ministry agreed that this report (pages 27 and 28) comprise the record at issue.

DISCUSSION:

PERSONAL INFORMATION/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 if it appears with other personal information relating to the individuals or where the disclosure of the name would reveal other personal information about the individual (section 2(1)(h)).

I have reviewed the two pages at issue and find that they contain details relating to the income of the affected person and his spouse. Accordingly, I find that the record contains the personal information of both of these individuals. The Ministry indicates that the record relates to an investigation which was conducted into the affairs of the affected person, who is a tenant of a local housing authority, as a result of a

complaint made by the appellant regarding his financial activities. However, this document does not refer in any way to the complaint or to the appellant. In my view, his connection to the information in the record, as a complainant, is too remote to render the information, contextually, as his personal information.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2) and (3) 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.

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 there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

The Ministry submits that the record contains highly sensitive financial and employment related information pertaining to the affected person and his spouse, and relies on sections 21(3)(d) (employment or educational history) and (f) (describes an individual's finances, income, etc.) as the basis for exempting it from disclosure. In my view, the Ministry has also, implicitly, raised the application of section 21(2)(f) (highly sensitive).

The affected person indicates that he is concerned about the use the appellant will make of the information in the record and, therefore, objects to its disclosure.

A portion of the record details the earnings of the affected person and his spouse and relates this information to their entitlement to subsidized housing. I find that the record clearly describes their finances, income and financial activities and the disclosure of this information would be a presumed unjustified invasion of personal privacy pursuant to section 21(3)(f) of the Act.

The record also contains information about the current employment status and activities of the affected person and his spouse. In my view, this information is "current" rather than "historical" and does not fall within the presumption in section 21(3)(f) (Order P-240). However, this information was obtained as part of an investigation into allegations of misrepresentation. In these circumstances, its disclosure would likely cause considerable personal distress to the affected persons, and I find that the information is highly sensitive in this context. Therefore, section 21(2)(f) is a relevant factor which weighs in favour of privacy protection.

In the absence of any factors weighing in favour of disclosure, I find that the balance is tipped in favour of non-disclosure. Therefore, the record is exempt from disclosure pursuant to section 21(1) of the Act as its

disclosure would constitute an unjustified invasion of the personal privacy of the affected person and his spouse.

COMPELLING PUBLIC INTEREST

The appellant has raised the application of the so-called "public interest override" in section 23 of the Act. Although he has not submitted representations on this issue, in his letter of appeal he asserts his view of the "guilt" of the affected person and indicates that, all taxpayers have an interest in stopping "fraudulent behaviour". Section 23 of the Act reads as follows:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

In order for section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure; and second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in Ontario (Minister of finance) v. Ontario (Information and Privacy Commissioner) (January 27, 1999), Docs. C29916, C29917 (Ont. C.A.), reversing (1998), 107 O.A.C. 341 (Div. Ct.)].

In Order P-984, Adjudicator Holly Big Canoe described the criteria for the first requirement mentioned in the preceding paragraph, as follows:

In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply, in this case, section 21. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption (Order P-1398).

I agree with these approaches to the analysis of section 23. Although the use of public funds is unquestionably of concern and interest to the public, based on my independent review of the information in the record, I find nothing in this record to lead me to conclude that there is a "compelling public interest" in its disclosure that would outweigh the purpose of the section 21 exemption.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____

_____ April 20, 1999

Laurel Cropley
Adjudicator