



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

# ORDER PO-1699

Appeal PA-990046-1

Ministry of Natural Resources



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## **NATURE OF THE APPEAL:**

The appellant made a request to the Ministry of Natural Resources (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

. . . the Land Use Permit extended to the [named property owners], authorizing [them] to maintain [their] cottage on the Road Allowance between [two property descriptions] . . . I would also like whatever other documents the [Ministry] possesses that authorizes the [named property owners'] cottage to remain on the above road allowance . . .

The Ministry responded to the request by advising the appellant that the request could affect the interests of affected persons, and that, pursuant to section 28 of the Act, the affected persons were being given an opportunity to make representations concerning disclosure of the records. The Ministry then notified these seven individuals of the request. Two of the affected persons responded to the Ministry's notice; one consented to disclosure of his/her information, while the other objected to such disclosure. The Ministry then wrote to the two affected persons who responded to the Ministry's notice, and four of the other affected persons, and advised that, in fact, the records relating to those individuals were not responsive to the request.

The Ministry then decided to grant partial access to the following records:

1. Land Use Permits for the said cottage for the years 1989 to 1998;
2. Letters from the Ministry regarding the renewal application for Land Use Permits for the same cottage for the years 1987, 1990 and 1993 through 1996;
3. Letter from the Ministry confirming that the Ministry is prepared to issue a Land Use Permit to a purchaser of the cottage structure and the adjoining private parcel;
4. Ministry memorandum dated April 21, 1987 regarding possible lease option; and
5. Ministry memorandum dated April 1, 1987 regarding Crown lease option.

The Ministry explained that severances were made under section 21 of the Act (personal privacy) because portions of the records contain personal information which relates to individuals other than the appellant.

Upon payment of the requested fee, the Ministry disclosed copies of the records to which it had decided to grant access.

The appellant appealed the Ministry's decision to this office.

During the mediation stage of the appeal, the appellant narrowed the scope of his request, to include only pages 29, 84, 85 and 136 of the record. In addition, the appellant agreed not to seek access to (i) the address and telephone number of the individual named in page 29 of the record; and (ii) the address of the solicitor named in pages 84 and 136 of the record.

I sent a Notice of Inquiry setting out the issues in the appeal to the Ministry, the appellant and two affected persons notified of the request. The first affected person is the individual whose name appears as the land

use permit applicant on page 29. The second affected person is the individual who previously owned the property subject to the page 29 land use permit. I received representations from the Ministry and the appellant only.

## **RECORDS:**

The records at issue are described as follows:

<b>Pages</b>	<b>Description</b>	<b>Portions at issue</b>
29	Land Use Permit dated February 16, 1998	first affected person's name, signature of first affected person and co-applicants, and date of signatures
84-85	letter to a solicitor from the Ministry dated October 8, 1992	entire record, except for the solicitor's address
136	letter to a solicitor from the Ministry dated March 23, 1987	entire record, except for the solicitor's address

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

The Ministry submits that the names of individuals contained in the records, in the circumstances, constitute personal information, since disclosure of those names would reveal information about those individuals. The Ministry further submits that even if the names, addresses and telephone numbers are removed, the remaining information would constitute personal information because "it could reasonably be used to identify [the] individual[s]."

The appellant makes no specific representations on this issue.

Previous orders of this office have held that an individual's name as contained in a building permit application constitutes the individual's personal information [Orders M-138, M-197, M-911]. In my view, the name of

an individual contained in a land use permit should be treated in a similar fashion. Accordingly, I find that the name of the first affected person on page 29, and the signatures of the first affected person and the co-applicants on that record constitute those individuals' personal information. In addition, I find that the date of the signatures in the circumstances also constitutes personal information.

With respect to pages 84 and 85, I find that this letter contains personal information of the first affected person named in page 29, including the individual's name together with information respecting the road allowance matter. In my view, this information can be said to be "about" the first affected person, although it relates to a property matter.

Page 136 contains the name of the second affected person, the previous owner of the property subject to the page 29 permit application. In addition, this letter contains information respecting the road allowance matter and the first affected person. Similar to my findings with respect to pages 84 and 85, I find that this information can be said to be "about" the first and second affected persons, although it relates to a property matter.

In summary, the first affected person's name, that person's signature and the co-applicants' signatures, and the date of the signatures on page 29 constitute personal information of those individuals. Pages 84, 85 and 136 in their entirety constitute the first and second affected persons' personal information.

Below I will determine whether or not the personal information identified above is exempt under section 21(1).

## **PERSONAL PRIVACY**

Where a requester seeks personal information of other individuals, and the disclosure of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information.

In this situation, 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 institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that 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) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the Act or if 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.

The Ministry submits that the presumption at section 21(3)(f), and the factor weighing against disclosure under section 21(2)(f) apply to personal information in the records. Those sections state:

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
  - (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (2) 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,
  - (f) the personal information is highly sensitive;

The Ministry argues that disclosure of personal information in the records would “describe the assets of the [first affected person]” and thus the presumption at section 21(3)(f) applies. With respect to pages 84, 85 and 136, the Ministry submits that, in his submissions to the Ministry at the request stage, the first affected person “asserted these records were his personal information as they were responses of the Ministry to his solicitor describing his assets . . . and sensitive information around the purchase of Crown land. The affected party also felt that disclosure of these records would be an unjustifiable invasion of privacy under subsection 21(1)(f).” The Ministry goes on to assert that under section 21(2)(f), the personal information is “highly sensitive” given the circumstances of this case.

The appellant submits that disclosure would not constitute an unjustified invasion of personal privacy because disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny [section 21(2)(a)]; access to the personal information may promote public health and safety [section 21(2)(b)]; access to the personal information will promote informed choice in the purchase of goods and services [section 21(2)(c)]; and the personal information is relevant to a fair determination of rights affecting the person who made the request [section 21(2)(d)]. Those sections read:

- (2) 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,
  - (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

Regarding section 21(2)(a), the appellant provides detailed submissions on how he believes the Ministry did not act appropriately with respect to the road allowance matter. However, the appellant does not explain in detail how disclosure of the specific personal information at issue would be desirable for the purpose of subjecting the activities of the Ministry to public scrutiny. Therefore, I find that the section 21(2)(a) factor favouring disclosure does not apply.

Under section 21(2)(b), the appellant explains that the current situation surrounding the road allowance represents a safety hazard; however, the appellant again has failed to establish anything greater than a remote connection between any safety hazard that might exist, and disclosure of the personal information in the records at issue. Therefore, I find that this factor favouring disclosure does not apply.

In my view, section 21(2)(c) cannot apply in these circumstances, since the appellant has not indicated what potential “purchase of goods and services” exists here. Any purchase of land would not fall within the scope of this factor favouring disclosure.

Regarding section 21(2)(d), the appellant indicates that there is potential for litigation arising from the road allowance matter. In my view, the appellant has established the application of this factor weighing in favour of disclosure, but only with respect to pages 84 and 85. These pages appear to be central to the issues in dispute, while the remaining records appear to be of peripheral relevance only. Thus, I accept that the personal information in pages 84 and 85 is relevant to a fair determination of rights affecting the appellant.

With respect to the “highly sensitive” factor in section 21(2)(f), I find that it applies in these circumstances, given the serious nature of the legal issues and allegations respecting this matter. However, I find that this factor applies only to pages 84 and 85. The personal information on pages 29 and 136 cannot be described as highly sensitive given the circumstances.

As a result, with respect to pages 29 and 136, no factors weigh in favour of disclosure. Accordingly, I am unable to find that disclosure of the personal information in these records would not constitute an unjustified invasion of personal privacy under section 21(1)(f). Therefore, these records are exempt.

With respect to pages 84 and 85, the only two factors under section 21(2) I find applicable are section 21(2)(d) favouring disclosure, and section 21(2)(f) favouring non-disclosure. In my view, the “fair  
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determination of rights” factor and the “highly sensitive” factor are of equal weight in the circumstances. Because section 21(1)(f) permits disclosure only if it does not constitute an unjustified invasion of privacy, I must conclude in the circumstances that the section 21(1)(f) exception does not apply.

To conclude, the personal information at issue on pages 29, 84, 85 and 136 is exempt under section 21(1)(f) and must not be disclosed.

Because of my findings under sections 21(1)(f) and 21(2), it is not necessary for me to consider the application of section 21(3)(f).

### **PUBLIC INTEREST OVERRIDE**

The appellant indicates that he believes that a public interest exists in the disclosure of the records. The appellant submits that the Ministry should not have allowed the issue of the public interest in using the road access in question to remain unresolved, and that the matter is now in need of a quick resolution. The appellant further submits that inquiries have been made to the Ministry regarding accessibility of the lake and use of the road allowance.

The two requirements contained in section 23 must be satisfied in order to invoke the application of the so-called “public interest override”: there must be a compelling public interest in disclosure; and this compelling public interest must clearly outweigh the purpose of the exemption, as distinct from the value of disclosure of the particular record in question [Order 24].

In my view, there clearly is a public interest in the overall road allowance issue. However, the appellant has not provided sufficient information to persuade me that disclosure of the records at issue here would advance the public interest to the extent that the “compelling” threshold would be met. Therefore, I find that section 23 does not apply in the circumstances.

### **ORDER:**

I uphold the Ministry’s decision.

Original signed by: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_  
July 28, 1999