



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

ORDER MO-1176

Appeal MA-980194-1

Township of Delhi



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NATURE OF THE APPEAL:

The Township of Delhi (the Township) received a request from an elected councillor under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The councillor had been provided with a copy of Report No. PW-033-98 (the report) in which a consultant recommended that the Township choose a certain bidder for road repair work. The recommended bidder did not submit the lowest bid in response to a tender issued by the Township. The councillor requested access to:

1. All documentation and information obtained by the Public Works Department or [a named consultant] relative to workmanship and past performance of [the lowest bidder] in order to make the recommendation for contract award for TWP bridge # 5. Specifically the name of the contact person at M.T.O. London, and the names of the five references the inquiry was directed to, as stated in the report.
2. Also from a previous request, the total tonnage of aggregate haul by Township trucks in 1996 and 1997.

The Township disclosed all records responsive to the second part of the request.

As far as the first part of the request was concerned, the Township created a one-page record listing the name, employer/business affiliation (employer), address, and telephone number of the five individuals who had been contacted for references.

In accordance with section 21 of the Act, the Township notified these five individuals and provided them with an opportunity to submit representations on the possible disclosure of the record. Three of the individuals, including the contact person at the Ministry of Transportation in London, consented to disclosure of their names, employers, addresses and telephone numbers. This information was then provided to the councillor by the Township.

The other two individuals objected to disclosure, and the Township denied access to the parts of the record relating to these individuals pursuant to section 10 (third party information).

The councillor (now the appellant) appealed the denial of access, and also stated that additional records in the form of notes taken by the consultant should exist. During mediation, the two individuals (the affected parties) raised the possible application of section 14(1)(f) (unjustified invasion of privacy).

A Notice of Inquiry was sent to the appellant, the Township and the two affected parties.

The appellant asked that his letter of appeal be considered as his representations. Representations were received from the Township and from the employer of one of the affected parties. The other affected party did not respond to the Notice of Inquiry.

DISCUSSION:

THIRD PARTY INFORMATION

[IPC Order MO-1176/December 22, 1998]

The Township and the affected party's employer claim that section 10(1) applies to the information

contained in the record.

Section 10(1) of the Act reads, 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;

For a record to qualify for exemption under section 10(1)(a), (b) or (c) the Township and/or the affected parties must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the Township in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

[Orders 36, M-29 and M-37]

Type of Information

The Township states that:

The Township feels that technical information could be revealed as the result of disclosure of the record.

Information was supplied to our Consultant by certain individuals (Engineers, C.E.T., Public Works personnel, as identified in the record) concerning the performance of [the named construction company]. The appellant, in his capacity as a Township councillor was aware of comments made by these individuals as this information was contained in Report PW-033-98, however the ownership of the comments could not be ascertained from the report.

The affected party's employer states that his employee provided an oral response to the consultant on the performance of the named construction company, in accordance with regular industry practice. He submits:

The evaluative information given in response to such inquiries provided, i.e. the evaluative material is unarguably **technical information**, for it is information that requires a good deal of background knowledge and experience in construction techniques, technology and materials in order to understand the information given [emphasis in original].

"Technical information" has been defined in previous orders as "belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics ... it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing." [Orders P-454 and P-479].

Although the evaluative material itself might satisfy the definition of "technical information", no such information is contained in the record at issue in this appeal. It is abundantly clear that the names, employers, addresses and telephone numbers of the two affected parties is not technical information, nor does it qualify under any of the other categories of information listed in section 10(1). Therefore, the first part of the section 10(1) exemption test has not been established. Because all three parts of the test must be present, the undisclosed portions of the record do not qualify for exemption under section 10(1) of the Act.

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 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.

In response to the Township's section 21 notice at the request stage, one of the affected parties identified paragraph (f) of the definition of personal information as the basis of concluding that the record contained his personal information. This paragraph provides that personal information includes:

correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence.

In response to the Notice of Inquiry, this affected party's employer states that at the time of responding to the Township's section 21 notice, he was unaware that no written evaluation was provided by his employee. The employer now realizes that all communication was verbal, and that paragraph (f) has no relevance in the circumstances.

The Township's representations do not deal specifically with the definition of personal information, focussing instead on the requirements of the section 14 exemption claim.

It has been held in a number of orders that the names and telephone numbers of individuals which identify them in their professional or employment capacities cannot be categorized as "personal information" (Orders P-157 and P-369).

In the present case, both affected parties were contacted by the Township's consultant as representatives of their employer organizations, for the purpose of obtaining their professional input on the evaluation of services provided by a specified contractor. The record at issue contains the names of these individuals, together with the names of their employers, the company addresses, and business telephone numbers. Adjudicator Donald Hale recently discussed the issue of professional versus personal information in considerable detail in Order R-980015, and made the following comments which I feel are equally applicable in the present appeal:

I find that the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not **about** these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of

personal information contained in section 2(1)(e) of the Act. Nor is the information “about” the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message.

I find that the information at issue in this appeal was provided in the context of employment responsibilities, and is not “about” the five individuals in a personal sense. Therefore, applying the reasoning from Order R-980015, I find that the record does not contain the personal information of the affected parties as defined by section 2(1).

Because the record does not contain personal information, section 14 does not apply.

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Township indicates that further records do not exist, it is my responsibility to ensure that the Township has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Township to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under section 17 of the Act, the Township must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

The Township submitted an affidavit sworn by the Clerk, which states that Report PW-033-98 was presented to the Committee of the Whole, and that:

The Director of Public Works appended a detailed report and recommendation from the Township’s Consultant, []. Contained in the report from [the named consultant] is information that he had obtained by contacting various references regarding the workmanship and past performance of the [named construction company].

When the appellant’s access request was received, it was forwarded to the Director of Public Works, but the Clerk states that “ ... no further information was available with respect to workmanship or past performance by [the named construction company].”

The Clerk also states in her affidavit that she subsequently had a telephone conversation with the consultant, and that:

I advised [the named consultant] that the purpose of the call was to enquire if he had any further information with respect to the workmanship or past performance of [the named construction company] and in particular if he had a list of the names and addresses that he had contacted.

He stated that any rough notes (names, addresses, telephone numbers) that he may have taken during telephone conversations were discarded once the tender recommendation letter had been completed and submitted to the Township. During the telephone conversation with [named consultant], he advised me who he had contacted and I then created a record of the references.

This is the only information other than that which is contained in Report PW-033-98 that relates to the workmanship or past performance of [the named construction company].

I am satisfied that the Township's search for records which are responsive to the request was reasonable in the circumstances.

ORDER:

1. I order the Township to disclose the unsevered portions of the record by **January 28, 1999** but not before **January 25, 1999**.
2. I find that the Township's search for records responsive to the appellant's request was reasonable.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ December 22, 1998