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

ORDER MO-1234

Appeal MA-990052-1

Regional Municipality of York

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NATURE OF THE APPEAL:

The appellant, a lawyer, submitted a request for access to information to the Regional Municipality of York (the Region) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant represented a company (the company) which had been the subject of investigation by the Region for possible violations of environmental by-laws and/or regulations. The appellant specifically requested:

> Copies of all records (including notes, letters, memoranda, reports, offence notices etc.) respecting [the company] relating to:
>
> (i) the administration and enforcement of noise and sewer by-laws at [the company];
>
> (ii) fires, spills or other environmental or safety incidents at [the company];
>
> (iii) any environmental approvals, permits or licences; and
>
> (iv) any environmental condition at [the company].

The Region located 57 records responsive to the request and decided to grant full access to 50 records, and partial access to four records. Portions of the four records were withheld on the basis that they were not responsive to the request. The Region also decided to withhold three records in their entirety (Records 24, 25, 26), on the basis of the exemption at section 10(1)(b) of the Act (third party information). In response to a query from the appellant, the Region explained that it was withholding these three records because their disclosure would reveal technical information supplied in confidence either explicitly (in the case of Records 24 and 25) or implicitly (in the case of Record 26).

The appellant appealed to this office the Region's decision to withhold Records 24, 25 and 26. In his letter of appeal, the appellant made detailed submissions in support of his position that section 10(1)(b) does not apply to the records at issue.

During the mediation stage of the appeal, the Region issued a revised decision letter to the appellant, in which it stated that it was also relying on section 14(1)(f) (unjustified invasion of personal privacy) of the Act to deny access to the records at issue. The Region explained that the records contain personal information relating to identifiable individuals, the disclosure of which would unjustifiably invade their personal privacy. The Region further explained that it believed that disclosure would expose the individuals unfairly to pecuniary or other harm, that the personal information is highly sensitive, that it was supplied by the individuals in confidence and that disclosure may unfairly damage the reputation of the individuals [sections 14(2)(e), (f) (h) and (i)].

I sent a Notice of Inquiry setting out the issues in the appeal to the Region and the appellant. I received representations from both parties.

THE RECORDS:

The three records at issue in this appeal are described as follows:

Record 24	Letter to the Region from a company employee dated September 21, 1994
Record 25	Region file notations dated September 16, 1994 and September 20, 1994
Record 26	Region file notations dated July 28, 1994

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 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.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

The following passage from a decision of the Supreme Court of Canada in Dagg v. Canada (Minister of Finance) (1997), 148 D.L.R. (4th) 385 at 413, 415, in the context of the federal Privacy Act, captures the essence of the distinction which this office has drawn between an individual's personal, and professional or official government capacity:

> The purpose of these provisions is clearly to exempt [i.e., from the definition of "personal information"] only information attaching to positions and not that which relates to specific individuals. Information relating to the position is thus not "personal information", even though it may incidentally reveal something about named persons. Conversely, information relating primarily to individuals themselves or to the manner in which they choose to carry out the tasks assigned to them is "personal information".
>
> . . . . .
>
> The fact that persons are employed in government does not mean that their personal activities should be open to public scrutiny. By limiting the release of information about specific individuals to that which relates to their position, the Act strikes an appropriate balance between the demands of access and privacy. In this way, citizens are ensured access to knowledge about the responsibilities, functions and duties of public officials without unduly compromising their privacy [see Order P-1621].

In Reconsideration Order R-980015, former Adjudicator Donald Hale reviewed the jurisprudence relating to the definition of the term "personal information" as it relates to individuals associated with organizations:

> ... 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. Individuals expressing the position of an organization act simply as a conduit between the intended recipient of the message and the organization. The voice is that of the organization rather than that of the individual delivering the message. In the usual case, the views expressed are those of the organization, as opposed to the personal opinions or views of the individual within the meaning of section 2(1)(e) of the Act. Further, this information will not be considered to be "about" the individual, for the reasons set out above [emphasis in original].

The Region submits:

> ... The information provided by the identifiable individual qualifies as personal information in that it was correspondence sent to the institution by the individual explicitly indicating it should be treated as private and confidential. Disclosure of the records would identify the individual contrary to the expectations of the individual. Also, the views and opinions of the individual qualify the information as personal information ...

The appellant submits:

> Of relevance in this appeal is the fact that the name of an individual per se is not ... personal information unless the name appears with other information concerning the individual or where disclosure of the name would reveal other personal information about the individual. Accordingly . . . there is no personal information in the records if the sole concern is the release of name.
>
> An individual's name, when that individual is acting in a professional, rather than a personal capacity, is not personal information. (See Order P-139 ... M-47). Therefore, records supplied in a professional capacity (e.g. by an employee of [the company] or a consultant) do not require the protection of the individual's name ... [I]nformation supplied by an

> individual acting in a professional capacity is properly the property of the organization and/or corporation by which the individual is employed. Therefore, if the information in the records had been released by an employee or consultant of [the company], that information properly belongs to [the company]. In addition, such information is not considered to be "about" the individual employee, and it is not personal information. Rather it is about [the company], and [the company] consented to the release of this information.
>
> Further, in its letter of May 26, 1999, [the Region] admits that there is information in the records which is not personal information ... There is, therefore, no justification for not releasing that information.

In my view, disclosure of the information contained in the records would reveal the identity of various employees of the company who provided information to the Region respecting possible violations of environmental by-laws and/or regulations by the company. Thus, disclosure of the records in this case would reveal not only the names of these individuals, but also "other personal information about the individuals" within the meaning of paragraph (h) of the section 2(1) definition of "personal information", the other information being the fact that they were the individuals who provided information to the Region. This information qualifies as information "about" the individuals, rather than the company. This information goes well beyond mere information "about the position", and relates to the manner in which these individuals chose to carry out the tasks assigned to them. In my view, it cannot be said that when providing information to the Region, these individuals were doing so on behalf of the company, as its "voice". Rather, the individuals were speaking on their own, personal behalf.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information unless one of the six exceptions listed in the section applies. In these circumstances the exception at section 14(1)(f) may apply. That provision reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy;

Sections 14(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 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to 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 14(2) [Order P-1456, citing John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

In this case the Region has suggested that the criteria at sections 14(2)(e), (f), (g) and (i) are applicable factors weighing against disclosure. The appellant takes issue with the application of these factors, but makes no reference to any factors under section 14(2), either listed or unlisted, weighing in favour of disclosure.

The Region has provided information suggesting, although not explicitly, that the presumption against disclosure under section 14(3)(b) applies. That section reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

In making representations on the application of the factor at section 14(2)(f), the Region states:

> ... The information indicates a possible violation of sewer use regulation designed for the protection of the environment and health of the citizens. Conveying information that would assist in preventing further damage to the environment is ... a sensitive matter and to establish the violation of the regulation for the purpose of possible prosecution is an equally sensitive matter.

On the application of section 14(3)(b), the appellant submits:

> ... this subsection is intended to protect the personal privacy of the person being investigated, not a person who is identified in an investigation. The protection of confidential informers is covered by section 8 of the Act, and [the Region] has not relied on that section to justify non-disclosure of the records. For example, if the information concerns an investigation about [the company], this subsection is intended to protect [the company] from having information released about it and the subsection is not intended to protect a person providing information to [the Region] about [the company]. [The company] has consented to the release of information to me on its behalf.

I do not accept the appellant's submissions on this point. The wording of section 14(3)(b) is clear. It applies to information compiled and identifiable as part of an investigation into a possible violation of law (except to the extent that disclosure is necessary to prosecute the violation or continue the investigation). In the circumstances, it is clear that the information in all three of the records was compiled as part of an investigation into possible violations of environmental by-laws and/or regulations. While in some cases this office had found that section 14(3)(b) cannot apply to information actually supplied by the requester, based on the "absurd result" principal (see, for example, MO-1224), those cases are distinguishable from this appeal. Here, as I found above, the records contain personal information of various individuals, as distinct from the company. Therefore, the absurd result principal has no application in this case. As a result, I find

that the records are exempt under section 14(1), since disclosure is presumed to constitute an unjustified invasion of privacy pursuant to sections 14(3)(b) and 14(1)(f).

Because of my conclusion above it is not necessary for me to address the application of section 10(1) to the records.

ORDER:

I uphold the Region's decision.

Original signed by: September 13, 1999
David Goodis
Senior Adjudicator