



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

ORDER PO-1749

Appeal PA-990208-1

Ministry of the Environment



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NATURE OF THE APPEAL:

The appellant, a lawyer, made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Environment (the Ministry). The request was for access to all records including applications for Certificate of Approvals, licences, permits, offence notices and subject waste generator registrations including records which might be located at the Approvals Branch, the Spills Action Centre, Central Region Office, York Durham District Office, Investigations and Enforcement Branch and the Waste Reduction Branch regarding the appellant's client, a manufacturing firm.

The Ministry located eight records which were responsive to the request and decided to grant partial access to them, denying access to information which would identify several complainants pursuant to section 21(1) of the Act. In a supplementary decision letter, the Ministry also claimed the application of section 17(1) to the undisclosed information. The appellant appealed the Ministry's decision to deny access to the information relating to these individuals.

During mediation, the Ministry disclosed Records 5, 6 and 8 to the appellant and withdrew its reliance on the section 17(1) exemption. The Ministry also added section 14(1)(d) as an exemption claim for Records 1, 2, 3, 4 and 7. This additional discretionary exemption was raised within the 35-day time limit set by this office in the Confirmation of Appeal provided to the Ministry when the appeal was opened.

This office sent a Notice of Inquiry setting out the issues in the appeal to the Ministry, the appellant and to two other individuals whose interests may be affected by the outcome of this appeal (the affected persons). Representations were received from the Ministry, the appellant and one of the affected persons.

RECORDS:

- Record 1: Document entitled "The Research Corporation of New England," with three pages of handwritten notes.
- Record 2: Central Region Incident Report dated August 27, 1990, with attachments dated August 21 and 22, 1990.
- Record 3: Occurrence/Supplemental Reports dated October 18, 1994 and November 6 and 7, 1994.
- Record 4: Letter dated September 30, 1994 from an Environmental Officer at York Region to an individual at the Ministry of the Environment.
- Record 7: Verbal transaction dated November 9, 1994 from the Ministry.

The Ministry has severed information from these records which it has identified as the personal information of the complainants or which would identify confidential sources of information.

I note that the appellant in this case has made an access request and a subsequent appeal of a decision of the Regional Municipality of York for similar information relating to the same complaints against his client. In Order M0-1234, Senior Adjudicator David Goodis found this information to be exempt under section 14(1) of the Municipal Freedom of Information and Protection of Privacy Act, which is the equivalent provision to section 21(1) in the provincial Act. In my view, the principles relied upon in that decision are equally applicable to the issues to be decided in the present appeal.

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.

The Ministry submits that the undisclosed information contained in Records 2, 3, 4 and 7 relates to identifiable individuals who have supplied the Ministry with information about the environmental practices of the appellant’s client. The information is properly characterized as “personal information” as it includes the individuals’ names, addresses, telephone numbers and other information whose disclosure would identify them as the persons who contacted the Ministry. It is unclear how the individuals named in Record 1, along with their telephone numbers, came to be included with the records relating to the appellant’s client. The Ministry is of the view that these individuals may be complainants, but it is unable to confirm this. The investigator who maintained this file was unable to ascertain the reason for the inclusion of these names in the file.

The appellant submits that:

The name of a person alone is not personal information because it is not recorded “about” an identifiable individual: See Order 27 (Ministry of Labour, November 2, 1988).

...

In that decision, the Commissioner ultimately found that the name was not personal information because it was recorded in conjunction with the requester’s FOI request. The present case is very different. In this case, I am only requesting the name of the person (to which access has been denied) and all of the other information in the record (which has been released) is information about my client, not the person.

Upon my review of the records, however, I find that the severed information which is at issue consists of more than just the individuals’ names. Other personal information such as their telephone numbers, addresses and employment situation accompanies the names in the records.

In my view, disclosure of the information contained in the records would reveal the identity of the individuals who provided or may have provided information to the Ministry 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 Ministry along with their telephone numbers, addresses and employer. This information qualifies as personal information “about” these individuals, rather than the company which was the subject of the complaints.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Once it has been determined that a record contains personal information, section 21(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 21(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 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 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) (Order P-1456, citing John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767).

The Ministry submits that the circumstances of this appeal are similar to those which were addressed in Order PO-1706, in which it was held that the disclosure of the identity of an individual who made a complaint to the Ministry of the Environment would constitute a presumed unjustified invasion of that person’s personal privacy under section 21(3)(b). The Ministry has not, however, provided me with any information to demonstrate, nor is it evident from the records themselves, that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

The Ministry also relies on several factors listed in section 21(2). It submits that when the complainants supplied information to it, they did not provide consent to disclose their identities. The Ministry indicates further that it has historically and consistently kept the names of complainants confidential in order to encourage the public to be the Ministry’s “eyes and ears” and to ensure that complainants are not

intimidated or harmed in any way. Although the Ministry does not specifically refer to any particular provision of section 21(2), its representations raise the application of sections 21(2)(f) (highly sensitive) and 21(2)(h) (provided in confidence).

Finally, the Ministry submits that having disclosed the nature of the complaint to the appellant, disclosing the identity of the complainant would not add anything to the understanding of the issue raised by the complaint. In my view, this is a relevant circumstance in determining whether disclosure of the identity of the complainant would constitute an unjustified invasion of privacy, and weighs in favour of privacy protection.

The affected person who made submissions has made it abundantly clear that he/she did not consent to the disclosure of his/her name or any other personal information to the appellant. Rather, this individual adamantly insists that the complaint was made with an expectation of confidentiality and that their personal information is highly sensitive.

The appellant argues that the presumption in section 21(3)(b) does not apply in the present appeal as this section is intended only to protect the identity of an accused person, and not the identity of an informant, which is addressed instead by section 14(1)(d). The argument was also raised in Order P-223, in which former Commissioner Tom Wright commented on the interpretation of section 21(3)(b) as follows:

I note that this subsection does not specify whether the “investigation into a possible violation of law” must be one which examines the activities of the individuals who are subject to investigation or is more properly referable to those of the individuals interviewed in the course of such investigations. It is my opinion that the subsection may be interpreted in either way.

The appellant also submits that the Ministry and the affected persons must tender evidence that the release of the affected persons’ personal information would cause them “excessive personal distress” in order for the factor listed in section 21(2)(f) to be considered. Similarly, the appellant argues that the Ministry and the affected persons did not have any confidentiality understanding which would lead to a reasonable expectation of confidentiality, as contemplated by section 21(2)(h).

In my view, the Ministry and the affected person have provided me with sufficient evidence to establish that the names and other personal information of the affected persons are highly sensitive and that its disclosure would cause him or her excessive personal distress within the meaning of section 21(2)(f).

I also find that the affected persons provided the information reflected in the records, including their own personal information, to the Ministry with a reasonably-held expectation that it would be treated in a confidential fashion. The Ministry reiterates this position by pointing out that it always treats such unsolicited information from the public confidentially.

Consequently, I find that the factors favouring the non-disclosure of the severed information outweigh any which may favour the disclosure of the personal information contained in the records. The appellant has not

referred to any considerations in section 21(2) or any unlisted factors which favour the disclosure of the information to him. Section 21(1)(f) applies only if disclosure would **not** constitute an unjustified invasion of privacy. Balancing the right of the affected parties to personal privacy against the appellant's right of access, I find that the factors favouring privacy protection far outweigh any which may apply in favour of access. Accordingly, I find that the exception in section 21(1)(f) does not apply and the undisclosed information contained in the records is exempt under section 21(1). I need not, therefore, determine whether the section 21(3)(b) presumption against disclosure applies in the present circumstances.

Because of the manner in which I have addressed the application of section 21(1) to the information at issue, it is not necessary for me to consider whether section 14(1)(d) applies to it.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Adjudicator

_____ January 28, 2000