



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

ORDER PO-1723

Appeal PA-990033-1

Ontario Hydro



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BACKGROUND:

The appellant is involved in a dispute with two named individuals (the affected persons) regarding ownership of a property. To assist in understanding this appeal, I have set out the circumstances of this dispute.

On August 9, 1996, the appellant purchased a trailer from the affected persons which was located on an Indian Reserve. The appellant indicates that when she attempted to open an Ontario Hydro (Hydro) account for the property shortly after taking possession, she was advised that there were outstanding hydro charges which had to be paid before her account would be opened. It appears that issues over these unpaid charges remained outstanding for a period of time. During the time that the appellant had possession of the trailer, she did not actually occupy it, but indicated that it remained empty for most of this time. On June 6, 1997, she was finally able to open an account with Hydro.

On July 9, 1997, the appellant received a letter from the affected persons indicating that they had reclaimed ownership of the trailer effective June 6, 1997. They indicated that the decision to reclaim the property was made on several grounds, including:

- not paying the Hydro arrears of \$1208.05;
- not changing the Hydro contract to be in the appellant's name; and
- not paying any of the Hydro charges (during the time the trailer was in her possession).

The affected persons attached a copy of their hydro bill relating to the time for which the appellant had possession of the trailer (the dates on the bills commence March 31, 1996 and include up to June 19, 1997). In their letter, the affected persons also stated that they had full support of the Chief and Band Council in taking this action.

NATURE OF THE APPEAL:

The appellant submitted a request to Hydro for the energy consumption, monthly costs and any interest accrued for the account relating to this property for the period of August 9, 1996 through July 6, 1998. The appellant also asked for confirmation of the amount owing on the account by the affected persons prior to the appellant taking possession of the property, on August 9, 1996.

Hydro located responsive records and granted access to the energy consumption, monthly costs and interest for the period of June 6, 1997 to August 20, 1997 when the account was in the appellant's name. Hydro denied access to the remaining records pursuant to section 21(1) of the Act.

The appellant appealed the denial of access.

I sent a Notice of Inquiry to Hydro, the appellant and the affected persons. Representations were received from Ontario Hydro Services Company Inc. on behalf of Hydro and the appellant.

RECORDS:

The records consist of pages of print-outs regarding the account. The first set of print-outs include dates, amounts of bills and any outstanding balance owing. The second set of print-outs contains information about energy consumption, and the responsive portions of these records include information under the headings "Reading Dates", "Readings", which include a number and an indication as to whether this was an actual reading, an estimated reading, or a final reading, and "kWh Usage".

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)).

Hydro indicates that the records at issue are pages of print-outs regarding the account for the specified property for the time period requested. It states further that the information listed on the records includes the customer's name as account holder, dates and amounts of bills submitted to the account holder for payment, including late payment charges and interest, payment information, as well as any bad debts written off by Hydro. Hydro notes that the account holder is the party responsible for payment of the account. Hydro submits that the records at issue contain details of the account holder's financial transactions with it as they relate to billing for power consumption, interest, late payment charges, payment and debt write-offs.

Five pages of the first set of print-outs contain information which identifies the affected persons as account holders. Three pages relate to two other account holders.

I am satisfied that these records contain details of the financial transactions between the affected persons or other identifiable individuals as account holders and Hydro in relation to the power consumption at the trailer. As such, I find that they contain the personal information of these individuals as defined in sections 2(1)(b), (d) and (h) of the Act.

However, as the evidence demonstrates, the affected persons themselves have indicated that the energy consumption for the period of time in which the appellant was in possession of the property was incurred by her. In the unique circumstances of this appeal, I find that two pages and part of a third page of these records also contain the appellant's personal information as they are "about" her and the debt which she allegedly accrued.

The other five pages and part of the sixth page of the first set of print-outs do not contain the appellant's personal information. The information in these pages refers only to other account holders for the period of time after the affected persons reclaimed possession of the property.

The second print-out comprises two tables. In general, this record does not, in and of itself, contain any personal identifiers. The lower table only provides aggregate information for a two year time period. I find that this part of the record does not contain any information that can be linked to an identifiable individual and neither section 21(1) nor 49(b) can apply to it. As no other exemptions have been applied to the records, and I find that none apply, the information in this table should be disclosed to the appellant.

However, the location of the meter readings for specified time periods and all information flowing from that is identified in the top table. Additionally, in the context of this appeal, the appellant has identified the particulars of the hydro usage for this property. In my view, the identities of the affected persons and other identifiable individuals would be readily apparent from the information contained in this part of the record. Therefore, I find that it contains the personal information of all of these individuals. Similar to my findings above, those portions of the record which pertain to the time period in which the appellant was in possession of the property also contain her personal information.

Where a record contains the personal information of both the appellant and another individual, section 49(b) allows Hydro to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy.

On the other hand, where it is determined that a record only contains personal information of an individual other than the appellant, 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".

In both cases, 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 Ontario Court of Justice (General Division) Divisional Court stated in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767, that 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.

Hydro's position

Hydro outlines its policy and practice with respect to customer information, including information about energy consumption, billing, payment and debt. Hydro indicates that this type of information has always been treated by it as confidential personal information which is provided only to account holders unless consent is received from them. Hydro indicates that the only exception to this general practice is where an account has been outstanding for some time and it is considering disconnecting power to the property. Hydro recognizes that in cold weather this could result in damage to the property. Therefore, in cases where there is a tenancy, it may approach the landlord to provide this person with the opportunity to settle the account. In these circumstances, both the account holder and the landlord are notified of the actions taken by Hydro.

Section 21(3)(f)

Hydro submits that the records at issue contain financial information as well as information about personal liabilities such as outstanding debt and late payments. In addition, Hydro argues that this information goes to the account holder's creditworthiness. Hydro submits therefore, that the presumption in section 21(3)(f) applies to the personal information in these records.

Hydro acknowledges that the appellant is involved in a dispute regarding ownership of the property, including payment of monies owed for this property to the previous owner. Hydro indicates that the previous owner is also an account holder with it. Hydro states that it is not involved in this dispute in any way and takes the position that it must remain impartial in its dealings with the two parties.

Appellant's position

The appellant describes, in considerable detail, the dispute between herself and the affected persons. She raises a number of points in support of her position that she should be able to access the information at issue.

Exception to section 21 - section 21(1)(a) (consent to disclosure)

The appellant points out that the affected persons provided her with photocopies of their hydro bills which they state contain the debts owed by her. To substantiate this claim, the appellant provided copies of these hydro bills to this office. In this regard, she suggests that section 21(1)(a) applies to this information (consent to disclosure).

I do not accept the appellant's position on this point. In my view, section 21(1)(a) requires that consent be provided under the Act, that is, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request. The affected persons' disclosure of their personal information to the appellant was done in the context of their dispute and does not, in my view, extend to disclosure under the Act. That being said, however, the fact they did disclose this information to

the appellant is a circumstance to take into consideration in determining whether this information should be disclosed under the Act.

Factors and circumstances

The appellant's primary position is that, as the rightful owner of the property in question, she should be able to know the amount of the balance owing on the hydro account prior to the purchase of the property, particularly because she has been held liable for its payment. She indicates that she has compared the hydro bills for this period of time with a "comparable property". As a result of these inquiries, she expresses concern about the amount of usage for the property over the period of time that she possessed it and what appear, to her, to be inconsistencies in the billing and usage amounts.

The appellant states that she believes that one of the affected persons had access to the hydro information by virtue of his position in the Tribal office. She believes that he provided false information to the Band Council which ultimately resulted in the Band Council supporting his claim for repossession of the property.

She indicates that she initially went to a lawyer after the affected persons reclaimed the property, but, in the end did not retain his services. It appears that her primary objective in obtaining this information is to clear her name with the Band Council.

In another vein, the appellant notes that there is an arrangement between Hydro and the Band Council for information about hydro accounts on the Reserve to be provided to it. She indicates that this information is maintained at the Tribal office. She states that it is the practice of the Band Council to publicize the names of individuals who are delinquent in their payments in the local media in order to encourage them to pay their hydro bills so that they will not be "cut off". The appellant also notes that the Council pays for members who cannot pay and the arrangements for payments are openly displayed. She provided a copy of an accounts payable sheet which indicates the total amount of money spent on these expenses from the revenue fund.

Further in this regard, the appellant refers to the federal Privacy Act and indicates that the Band Council is not covered by this legislation, therefore, they are not prohibited from disclosing personal information under the federal privacy legislation. She argues that the Act cannot supercede the rights accorded to the Band Council under the Indian and Northern Affairs Act, and this information, therefore, should be provided in accordance with the Council's practices.

Findings

Section 21(3)(f) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[IPC Order OP-1723/October 26,1999]

Previous orders of this office have considered utility usage and billing information in the context of section 17(1) and its municipal equivalent, section 10(1) of the Act (Orders M-678 and P-607). Under section 17(1)/10(1), “financial information” is defined as “information pertaining to finance or money matters”. In Order M-678, Assistant Commissioner Tom Mitchinson found that water usage is financial information within the meaning of the definition. He based this on the fact that billing rates are available to the public and these rates can be applied to meter readings to determine the actual bill. This order implies that the actual bill would qualify as “financial information”. In Order P-607, Adjudicator Holly Big Canoe found that the total amount of kilowatt hours and the total cost for a specified period of time pertained to “finance or money matters” and thus qualified as “financial information”.

In my view, the entering of a contract for the provision of services in exchange for payment relates to the financial activities of the party or parties to the contract within the meaning of this term in section 21(3)(f) as well. Further, in this case, the amount of hydro usage as calculated per kilowatt hour is integral to determining the amount billed for the services. Similar to the findings in Order M-678, the billing rates for hydro services are available to the public, and by applying these rates to the meter readings, anyone would be able to determine the amount billed to the user, thereby revealing this individual’s financial activities. Therefore, I find that section 21(3)(f) applies to the personal information in the records at issue.

As I indicated above, the Divisional Court has stated that once a determination is made that a presumption applies to information contained in a record, it cannot be rebutted by the factors or considerations in section 21(2). On this basis, I find that the records which contain only the personal information of individuals other than the appellant are exempt from disclosure under section 21(1).

However, as I indicated above, two pages and part of a third page of the first set of print-outs also contain the appellant’s personal information as does the second set of print-outs. I noted further that the affected persons had already provided the appellant with a photocopy of the information in the first set of print-outs.

In Order M-444, former Adjudicator John Higgins found that applying the presumption in section 14(3)(b) of the municipal Act to information which the appellant or her representative originally provided to the Police would, applying the rules of statutory interpretation, lead to an “absurd result”. He found that to apply the presumption in that case would be contrary to one of the purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This reasoning has been applied in a number of subsequent orders of this office (Orders M-451, M-613 and P-1457, among others) and has been extended to include information which was obtained by an institution in the presence of the appellant, or, of which the appellant is clearly aware (Orders P-1414, M-966 and M-1077).

In my view, it would be contrary to the purposes of the Act, and would result in an absurdity to apply section 21(3)(f) to records which the affected persons have already provided to the appellant in the context of their dispute, particularly in circumstances where the affected persons allege that she is responsible for the hydro usage during the period of time recorded on these bills and all amounts on the bill and thus liable for their payment. Further, I find that the information in the second set of print-outs relating to the time period in

which the appellant was in possession of the property is so inextricably linked to the information in the first set of print-outs, that to disclose one without the other would continue and, in fact, exacerbate the absurdity of this result.

Before concluding this matter, however, I have considered the factors and circumstances in section 21(2). The following discussion sets out my findings in this regard.

In my view, the relationship between the federal Privacy Act and the Band Council, and the Band Council's practices in disclosing personal information, do not impinge on the application of the Act to records in the custody or control of a provincial institution. The subsequent disclosure of personal information provided to the Band Council by Hydro might be a relevant consideration in determining whether disclosure constitutes an unjustified invasion of privacy. However, in the circumstances of this case, I have no evidence before me that the information at issue has been disclosed in a public forum. Therefore, I am not persuaded of the relevance of this consideration in the circumstances of this case.

In respect of Hydro's policy and practices regarding customer accounts, they would appear to reflect an approach to these types of records which supports the confidential treatment of them. However, by its own acknowledgement, this approach is somewhat flexible, perhaps in the interest of treating its customers fairly, or perhaps in its own business interests in having the account paid. The evidence provided by the appellant suggests that Hydro is prepared to overlook individual privacy concerns in matters pertaining to, at least, the Reserve on which the property at issue is located. Consequently, I find that Hydro's arguments with respect to protecting the records which contain the personal information of both the appellant and the affected persons on the basis of its policy and practices are not persuasive and are of little weight. On another note, however, I am sceptical of the privacy concerns as expressed by Hydro in a more general sense, and am concerned about its practices in this regard.

With respect to the dispute itself, it appears that the appellant is implicitly raising section 21(2)(d). This section provides:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request.

Although the appellant is clearly involved in a dispute that has the potential of having legal implications, I am not persuaded based on the material before me that there is any pending or contemplated proceeding in which rights affecting the appellant may be determined (Order MO-1179). Therefore, I find that section 21(2)(d) is not relevant in the circumstances.

That being said, however, the appellant has described a set of facts and circumstances which raise significant fairness issues with respect to her dispute with the affected persons and her treatment by various

parties in this regard. Further, the appellant has supported her position with documentary evidence such as correspondence between herself and various parties, including the affected persons, Hydro, the Band Council and legal counsel. In my view, these fairness considerations weigh significantly in favour of disclosure.

In balancing the interests of the appellant and the affected persons I find that fairness concerns significantly outweigh any privacy interests the affected persons might have in the records which relate to the time period in which the property was in the possession of the appellant.

Consequently, I find that withholding the information in the records pertaining to this time period would lead to an "absurd result" and thus, its disclosure cannot result in an unjustified invasion of the personal privacy of the affected persons. Therefore, this information is not exempt under section 49(b).

For ease of reference, I will provide Hydro's Freedom of Information and Privacy Co-ordinator with a copy of the pages of the records which are not exempt under section 49(b) or 21(1), either in whole or in part. Where a page is partially exempt, I have highlighted the information on it which is not exempt from disclosure

ORDER:

1. I order Hydro to provide the appellant with copies of the records which I have provided to its Freedom of Information and Privacy Co-ordinator either in their entirety or in accordance with the highlighted versions (whichever is applicable) by sending her a copy of these records by December 1, 1999 but no earlier than November 26, 1999 from the date of this order.
2. I uphold Hydro's decision to withhold the remaining records and parts of records from disclosure.
3. In order to verify compliance with this order, I reserve the right to require Hydro to provide me with a copy of the material disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 26, 1999