



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

# ORDER PO-1729

Appeal PA-990094-1

Ministry of Citizenship, Culture and Recreation



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Citizenship, Culture and Recreation (the Ministry). The request was for access to a copy of the following correspondence:

- April 17, 1998 letter from Dover Mills Heritage Association to the Minister
- April, 1998 letter from [a named individual] to the Minister
- Minister's replies to the above letters.

The appellant indicates that the requested records were filed with the Ontario Municipal Board (the OMB) by the Dover Mills Heritage Association and the Port Dover Board of Trade in anticipation of a hearing which took place on October 9, 1998. The appellant states that the records were not disclosed to anyone at the hearing and are no longer in the OMB file. He indicates that he has been led to believe that his name was mentioned in these records and believes that he is entitled to the information which discusses him. The records relate to issues surrounding the continued closure and renovation of the Port Dover Harbour Marine Museum.

After notifying the individuals who wrote the letters and soliciting their views about disclosure of the records to the appellant, the Ministry denied access to the responsive records under section 21 (invasion of privacy) of the Act. The appellant appealed this decision.

I sent a Notice of Inquiry to the Ministry, the appellant and the two individuals who had written the letters (the affected persons). Although not relied on by the Ministry, I included the application of section 49(b) as an issue in the Notice because it appeared that the records might contain the personal information of the appellant. Representations were received from all four parties.

## **RECORDS:**

The records at issue in this appeal are:

Record 1: April 17, 1998 letter from Dover Mills Heritage Association to the Minister (2 pages)

Record 2: Reply by the Minister dated May 11, 1998 (1 page)

Record 3: Letter from the ex-Chairman of the Port Dover Harbour Museum Building Committee to the Minister received on May 22, 1998 (2 pages) with attachments:

- resume of ex-Chairman (1 page)
- copies of 22 letters addressed to members of Nanticoke Council (33 pages)

Record 4: Reply by the Minister dated June 12, 1998.

## **DISCUSSION:**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) 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,
- (g) the views or opinions of another individual about the individual, and
- (h) 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 all four records in their entirety constitute personal information of the affected persons and the other individuals whose correspondence was attached to Record 3. The Ministry submits that the records also contain "trivial amounts" of personal information of other individuals, including the appellant.

The affected persons submit that the letters contain their personal views and opinions regarding the continued closure and renovation of the museum. The letters also contain details of their history and qualifications in heritage and construction and, in the case of Record 3, information related to the age, marital and family status, education and employment history of one of the affected persons. The affected persons also submit that the letters are very personal in nature and were submitted with the belief that they would be kept in confidence.

The Ministry indicates that although Record 1 is described as a letter from the Dover Mills Heritage Association to the Minister, the Ministry accepted the affected person's submission that the views and opinions expressed were solely his own. The affected person has explained that the references to his

position with the Association were included to provide the Minister with a context for the content of the letter.

Although the letter contains references to both the position of the Association and the affected person's personal views, having reviewed its contents I agree with the Ministry and the affected person that the entire letter represents the affected person's personal opinions or views about the ongoing closure and renovation of the museum. The affected person submits that the letter was not meant to represent the opinions of the Association, and I accept this submission.

The only mention of the appellant in this letter is a reference to a statement made by the appellant at a council meeting. Although the appellant's involvement in the matters which gave rise to the records was in his professional, as opposed to his personal capacity, this reference, in my view, is information about the appellant and qualifies as his personal information as well.

Records 2 and 4 are the reply letters authored by the Minister. They do not contain any information about the appellant, personal or otherwise. They do contain the personal information of the affected persons, specifically their names and addresses. Both affected persons have consented to the disclosure of the remaining parts of these letters to the appellant.

Record 3 consists of a two page letter, a one page abbreviated resume of the affected person, and 33 pages of attached correspondence from 22 other individuals. Direct references to the appellant can be found on pages 6, 7, 18 and 34. Although not mentioned by name, it appears that there is also a reference to the appellant on page 1.

The affected person's letter and resume (pages 1-3) contain information about his age, marital and family status, education and employment history, address, and personal opinions or views about the issues involving the museum. I agree with the Ministry and the affected person and find that the information contained in the letter and resume qualify as the affected persons' personal information.

What appears to be a reference to the appellant (he is identifiable only by reference to his profession) could be characterized as the affected person's view or opinion about the appellant. Given the context, despite the fact that the appellant wasn't referred to by name, in the circumstances of this particular appeal I will consider this part of the record to contain the personal information of both the appellant and the affected person.

In the remaining 22 letters in Record 3, each author expresses his or her personal opinions or views about the delays in opening the museum. Accordingly, I find that each letter contains the personal information of its author. The references to the appellant on pages 6, 7, 18 and 34 relate to observations about his involvement in controversies over the museum. Again, because of the context, I will consider these parts of Record 3 to contain the personal information of both the appellant and the authors of these letters.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. The Parts of Records 1 and 3 which refer to the appellant will be considered in the context of this exemption.

Where, however, the record only contains the personal information of other individuals, and the release 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. Records 2, 4 and the parts of Records 1 and 3 which do not refer to the appellant will be considered in the context of this section.

In both these situations, 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. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Ontario Court of Justice (General Division) (Divisional Court) determined 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) 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.

Section 21(1)(a) creates an exception to the general prohibition against disclosing personal information upon the prior written consent of the individual to whom the information relates. Because the affected persons have consented to the disclosure of parts of Records 2 and 4, these records, with the exception of the names, addresses and salutations, do not qualify for exemption under section 21 and should be disclosed to the appellant.

With respect to the remaining records, the appellant argues that his success in his professional dealings is dependent upon his professional and personal reputation. The appellant submits that based on his discussions with Ministry staff, he has reason to believe that the records contain statements about him that could be damaging to his professional and personal reputation and could be libellous. He argues that the Act should not be used to shield individuals from answering in law to libellous statements.

On the other hand, the affected persons submit that the information in the records is highly sensitive (section 21(2)(f)), could expose community members and the affected persons to pecuniary or other harm (section 21(2)(e)) and was supplied to the Minister in confidence (section 21(2)(h)).

The appellant's submissions in favour of disclosure only address the comments made about him, not the remaining records or parts of records. In my view, the appellant has not established that disclosure of the parts of Records 1 and 3 which do not mention the appellant and the information remaining at issue in

Records 2 and 4 (the names, addresses and salutations) would not be an unjustified invasion of the personal privacy of the affected persons. Accordingly, I find that section 21 applies, and these parts of the records should not be disclosed.

With respect to the comments made about the appellant on pages 1, 6, 7, 18 and 34, having reviewed the records and the representations, I have made the following findings:

(1) The appellant claims that he requires access to the comments made about him in the records in order that he may ensure the integrity of his personal and professional reputation. In my view, his statement that the Act should not be used to “shield individuals from answering in law to libellous statements” can only be taken to mean that his intention is to peruse the records for what he believes to be libellous material and pursue civil remedies. I am satisfied that the appellant is seeking the information in order to determine whether it is necessary to exercise his common law rights to pursue a legal claim, and this factor weighs in favour of disclosure. However, the weight accorded to this factor must be low, given that the information is not required in order to prepare for an existing proceeding. In fact, the appellant is not aware that there are libellous statements in the records, only that there might be something in the records on which to base a civil action.

(2) The appellant’s representations, in my view, have a bearing on the sensitivity of the information at issue with respect to the individuals named in the records. In considering the nature of the personal information contained in the records and the submissions of the affected persons, I find that it is highly sensitive within the meaning of the Act. Accordingly, I find that section 21(2)(f), which is a factor which favours privacy protection, is relevant in the circumstances of this appeal.

(3) I am satisfied that the affected persons had a reasonably held expectation of confidentiality when submitting these letters, which is supported by the Ministry. Although the appellant claims that they were submitted to the OMB, these records were not in the OMB file, were not disclosed during the OMB process, and none of the other parties indicate that the records were submitted to anyone other than the Minister. Accordingly, I find that section 21(2)(h), which favours privacy protection, is relevant in the circumstances of this appeal.

Having considered all the relevant circumstances of this appeal, I find that sections 21(2)(f) and (h), which favour privacy protection, outweigh the disclosure interests of the appellant. Accordingly, I find that disclosure of the parts of pages 1, 6, 7, 18 and 34 which refer to the appellant would constitute an unjustified invasion of the personal privacy of these individuals and section 49(b) applies.

## **ORDER:**

1. I order the Ministry to disclose Records 2 and 4, with the exception of the names, addresses and salutations, to the appellant by sending him a copy by December 21, 1999 but not before December 16, 1999.

2. I uphold the Ministry's decision to deny access to the remaining records or parts of records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ November 16, 1999