



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

INTERIM ORDER PO-1786-I

Appeal PA-990362-1

Ontario Realty Corporation



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NATURE OF THE APPEAL:

The requester, a journalist, submitted a request to the Ontario Realty Corporation (the ORC) under the Freedom of Information and Protection of Privacy Act (the Act) for information pertaining to all properties sold by the ORC since 1995. Specifically, the requester sought access to the purchaser's name, the address and the purchase price.

The responsive records consist of five lists dated from May 5, 1995 to June 28, 1999 which identify the properties sold by the ORC. The lists include the name of the purchaser (individual or business), the legal description of the property, the closing date, a project number assigned by the ORC, and the purchase price. However, the only information sought by the requester from these records is the name of the purchaser, the location (legal description) of the property and the purchase price.

The ORC issued a decision denying access to the information relating to individual purchasers pursuant to section 21(1) of the Act (invasion of privacy). In doing so, it indicated that it relies on the presumption at section 21(3)(f) of the Act.

The requester (now the appellant) appealed the denial of access to information pertaining to the individual purchasers. Because the ORC had not yet issued a final decision respecting access to the business purchasers, the requester also included the issue of "deemed refusal" within the scope of his appeal (section 29(4)).

During the mediation stage of the appeal, the ORC indicated that, in claiming the section 21 exemption, it also relies on section 21(2)(f) of the Act.

I sent a Notice of Inquiry initially to the ORC. One of the issues raised in that Notice was whether the ORC was in a "deemed refusal" with respect to the information regarding the business purchasers.

Subsequent to this Notice, the ORC issued a final decision to the appellant. In that decision, the ORC indicated that the original records were not complete, and added a record for sales for the 1999/2000 fiscal year. The ORC maintained its section 21(1) exemption claim for all listed information regarding the individual purchasers. With respect to the 340 business purchasers identified in the records, the ORC granted full access to the information relating to 299 of them. The ORC denied access to the name/identity and purchase price relating to the remaining 41 business purchasers pursuant to section 17(1) of the Act (third party information), but granted access to the date of purchase, the location and the project number relating to these 41 business purchasers. The final decision issued by the ORC stated as follows concerning the section 17(1) claim:

Some of the requested information has been severed from the lists pursuant to [section 17] of the Act.

...

Entries whose disclosure may affect the interests of the purchaser have been severed pursuant to section 17(1) of the Act.

Prior to issuing this decision, the ORC had notified two business purchasers of the request, pursuant to section 28 of the Act, and sought their representations on disclosure of the portions of the records pertaining to them. One did not respond and the letter to the other was returned to the ORC as undeliverable.

As a result of the ORC's final decision, the issue of "deemed refusal" was resolved. However, the section 17(1) exemption claim added a new issue to this appeal and for that reason I sent a new Notice of Inquiry to the ORC. After reviewing the representations provided by the ORC, I sent the Notice of Inquiry to the appellant, together with the ORC's representations in their entirety. The appellant also submitted representations.

Because the appellant, in response to the ORC's representations, claimed that there is a compelling public interest in the disclosure of the records, I decided that the ORC should be given the opportunity to reply to that submission. Therefore, I sent a Supplementary Notice of Inquiry to the ORC together with the appellant's representations in their entirety. The ORC did not submit a reply.

I also sent the Notice to 145 individual purchasers and 18 business purchasers (together referred to in this order as "the affected persons"), for whom this office was able to obtain mailing addresses. The addresses for these parties were obtained by the ORC from either the official Land Registry form or through contact with the various local Land Registry Offices. Notices sent to 20 of the individual purchasers were returned to this office, 19 as undeliverable and one where the individual purchaser is deceased. The Notice provided the affected persons with the opportunity to submit representations respecting the disclosure of the information pertaining to them. As regards the individual purchasers, the Notice invited input from these individuals as to whether they would consent to disclosure of the information about them, and whether, in their view, disclosure would constitute an unjustified invasion of personal privacy.

I received written representations from 16 of the individual purchasers and one business purchaser. Five of the individual purchasers and the one business purchaser consented to disclosure of the information relating to them. One other individual purchaser consented to disclosure of the names of the two individuals who bought the property and the purchase price only.

In addition, five individual purchasers and one business purchaser contacted this office by telephone and indicated that they did not object to the disclosure of their information. A further three individual purchasers also contacted this office by telephone and indicated that they objected to disclosure of their information contained in the records. None of these individuals submitted their consent or objections in writing.

As a result of the unavailability of addresses for some affected persons, and the fact that a number of them for whom addresses were obtained appear to have moved, it has not been possible to notify all of the affected persons listed in the records. However, the vast majority have received Notice. For those who were not notified, reasonable efforts have been made to do so.

DISCUSSION:

THIRD PARTY INFORMATION

The ORC claims that the information relating to the business purchasers qualifies for exemption pursuant to section 17(1) of the Act. The two business purchasers who responded to the Notice either verbally or in writing did not object to the disclosure of their information, and the remaining business purchasers did not respond. Therefore, in my view, the onus is on the ORC, as the only party resisting disclosure under this exemption, to establish that it applies.

Sections 17(1)(a), (b) and (c) state:

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, where 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 the records to qualify for exemption under sections 17(1)(a), (b) or (c), the ORC must satisfy each part of the following three-part test:

1. the records 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 ORC in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the records must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 17(1) will occur.

[Order 36]

The ORC has not specified which of the above subsections it is relying on. However, its representations do not address the requirements of section 17(1)(b) and for this reason I will not address this subsection in my discussion.

In its decision upholding my Order P-373, the Court of Appeal for Ontario commented on the meaning of the three-part test articulated above, as follows:

With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meaning. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words “**detailed and convincing**” do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner’s function to weigh the material. Again it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm. [emphasis added]

[Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 (C.A.)]

Requirement One: Type of Information

The ORC submits that the “price paid by a business for property it has purchased from the government constitutes commercial information under section 17, as it relates to the buying of land”.

The appellant argues that:

The information being sought is of very limited nature in that it relates to the purchase price of a specific property. No information beyond address, property, and name of purchaser is being sought and accordingly no financial information of specific data concerning cost, account, method, pricing, practices, profit and loss data, overhead and operating costs.

The information that may be considered to be of commercial nature, i.e. the purchase price of a specific property, is information that is already in the public domain.

Commercial information is information which relates solely to the buying, selling or exchange of merchandise or services (Order P-493). Financial information relates to money and its use or distribution, and must contain or refer to specific data such as cost accounting methods, pricing practices, profit and loss data, overhead and operating costs (Orders P-47, P-87, P-113, P-228, P-295 and P-394).

Previous orders have considered whether information about the sale of land qualifies as commercial and financial information and concluded that it does (Orders P-87 and P-251). I agree. The purchase of land is a commercial transaction, and in my view, information such as the purchase price and the identity of the purchaser constitutes "commercial information". In addition, in my view, a list showing the ORC's business purchasers and the purchase prices they agreed to pay meets the "specific data" requirement articulated above, and therefore it also qualifies as "financial information".

I find that the first requirement has been established for all of the information regarding the business purchasers.

Requirement Two - Supplied in Confidence

In order to satisfy the second requirement, the ORC must show that the information was **supplied** to it, either implicitly or explicitly **in confidence**.

Supplied

The ORC and the appellant appear to agree that the information was supplied to the ORC. They do not agree, however, that this information was supplied in confidence and their representations focus almost exclusively on this part of the test. Therefore, my findings on whether the information was supplied are based primarily on my independent review of the records.

In sales of land, the purchase price is generally established as the result of a process of offer and counter-offer, finally resulting in an agreement of purchase and sale executed by both vendor and purchaser. Many previous orders have indicated that information in a contract arrived at through negotiations is not "supplied" (e.g. Order P-87). In order to meet the "supplied" test, the information must be one and the same as information originally provided by an affected person for the purpose of creating the record. I have no information before me to indicate that this is the case with respect to the purchase price of any of the properties sold to business purchasers. The evidence which has been provided to me, including the records, does not support a finding that disclosure of the purchase prices would reveal information that was "supplied" to the ORC by one or more of the business purchasers.

As regards the names of the business purchasers, I have previously found that the names of entities doing business with the government would not normally be considered to have been "supplied" simply because

they appear on a record (Order P-1574). In my view, the same principle applies in the circumstances of this appeal.

Accordingly, I find that the information regarding the business purchasers does not satisfy the “supplied” aspect of the second requirement in the test for this exemption.

In Confidence

In order to establish that the information was supplied either explicitly or implicitly in confidence, the ORC must demonstrate that an expectation of confidentiality existed at the time it was supplied to the institution (Order M-169), and that this expectation was based on reasonable and objective grounds. To do so, it is necessary to consider all circumstances, including whether the information was:

- (1) Communicated to the ORC on the basis that it was confidential and that it was to be kept confidential.
- (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected party prior to being communicated to the ORC.
- (3) Not otherwise disclosed or available from sources to which the public has access.
- (4) Prepared for a purpose which would not entail disclosure.

(Order P-561)

The ORC submits that:

In his request, the Appellant asked for the name of the purchaser, not the registered owner. The latter is public information, as it is included on the registered Deed, but the former is not. Since the name of the purchaser in the record at issue is not public information, it was supplied to the ORC in confidence ... [ORC's emphasis]

Furthermore, although as a general rule the purchase price is recorded on the Deed, if a purchaser chooses to pay the Land Transfer Tax owing on the property directly to the Minister of Finance, the purchase price will not appear on the Deed. Therefore, purchase price may also not be publicly available information.

The appellant seeks to refute this claim by arguing the following:

The information that is being sought is in the public domain in documents registered in the appropriate land registry office ...

... it is the policy of the Land Registry Office ... to require the transfer/deed of land to be stamped with the requisite file number of the Ministry of Revenue and the Ministry of Revenue will make available to any party requesting, the information concerning the purchase price.

The appellant provided the sworn affidavit of counsel practising in the area of real estate law that confirms the appellant's assertion about the purchase price. Although provided with an opportunity to do so, the ORC did not submit reply representations responding to the appellant's position on this issue. Based on the evidence before me in this appeal, I accept the appellant's argument that the purchase price is publicly available, either at the Land Registry Office or from the Ministry of Finance (which now includes the former Ministry of Revenue), and could not be the subject of a reasonable expectation of confidentiality.

As regards the names of the business purchasers, it is possible that this information might not find its way into the registered documents since a purchaser named in an original agreement of purchase and sale may direct the vendor to register the property in the name of some other person or entity. However there is nothing before me to suggest that this was the case for any of the business purchasers whose names are at issue.

To summarize, the evidence which has been provided to me, including the records, does not establish a reasonable expectation of confidentiality, either express or implied, on the part of the business purchasers regarding any of the information at issue. I therefore find that, even if the information was "supplied" to the ORC, this was not done with a reasonable expectation of confidentiality.

Accordingly, I find that the second requirement for the section 17(1) exemption claim has not been established.

Requirement Three - Harms

To discharge the burden of proof under the third part of the test, the ORC must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) could occur if the information was disclosed [Order P-373].

Other than stating that disclosure of the records would harm the commercial interests of the business purchasers, the ORC has not provided any evidence to support the requirements of this part of the section 17 test. None of the business purchasers submitted representations on this or any other aspect of the section 17 exemption claim.

The appellant submits that there can be no damage to the business purchasers' competitive position as the information is already in the public record and, since all of the transactions have been completed there can be no interference with any contractual or other negotiations of the business purchasers nor could there be any expectation of undue loss or gain.

In the absence of any substantiating evidence from the ORC and/or any of the business purchasers who have not consented to disclosure, I find that the third requirement of the test has also not been satisfied.

Therefore, I find that the exemption at section 17(1) of the Act does not apply. Because this is the only exemption claimed for the withheld information about the business purchasers, I will order the ORC to disclose it.

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.

The ORC submits that the records contain the personal information of the individual purchasers. The ORC states:

... an individual's name qualifies as personal information 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 disclosure of the name of an individual purchaser appearing with the description of the property purchased, and the price paid, would reveal that the individual had purchased property from the government of Ontario. Such a financial transaction is information “about” the individual. Furthermore, an individual's name, together with the price she or he paid for the listed property would also reveal information about the individuals' assets, financial history or activities. In short it would reveal financial information about the individual.

The individual purchasers who objected to disclosure support the ORC's claim that the records contain their personal information.

The appellant submits that the records do not contain personal information. In support of his position, he relies on the findings in Orders P-23 and M-188 where it was found that a listing of properties/municipal addresses, in the absence of any other information, was not about “identifiable individuals” and therefore did not qualify as personal information.

The circumstances of the current appeal are quite different from those in Orders P-23 and M-188. In this appeal, the records indicate that a particular individual purchased a specific property from the government and what the individual paid for that property. I agree with the ORC and the individual purchasers that this would, in fact, reveal information about the individual purchasers. Therefore, I find that the records contain the personal information of the individual purchasers. (See also Orders M-536, M-800, P-559, PO-1631 and PO-1754).

Once it has been determined that a record contains personal information and the appellant seeks personal information of an individual other than him/herself, section 21(1) of the Act prohibits the disclosure of this

information except in certain circumstances. Specifically, sections 21(1)(a), (c) and (f) of the Act read as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(a)

As noted previously, five individual purchasers have provided written consent to the disclosure of any of their personal information in the records, and a sixth purchaser consented to the disclosure of the names of the two individuals who bought the property and the price paid for the property. In my view, these consents meet the requirements of the exception in section 21(1)(a) of the Act. I therefore find that the information for which written consents have been received from individual purchasers is not exempt under section 21(1). Because no other exemptions have been claimed for this information, I will order the ORC to disclose it. I will identify these individuals in my covering letter to the ORC.

Section 21(1)(c)

The appellant submits the following:

The information that is being sought is in the public domain in documents registered in the appropriate land registry office. However, such information in the land registry office is in a form from which is not reasonably possible to ascertain information concerning dispositions by ORC. There are several millions of properties registered in the Land Registry Office and to isolate properties disposed of by the ORC is impractical.

The ORC submits that the "information in the record was not maintained specifically by the ORC for the purpose of creating a record available to the general public. The ORC uses the list for internal purposes only."

In support of its position, the ORC relies on the findings in Order PO-1736 and privacy complaint investigation reports PC-980049-1 and I94-011P.

With respect to Order PO-1736, the ORC points out that Senior Adjudicator David Goodis found that information regarding estates administered by the Public Guardian and Trustee (the PGT) during a specified time frame is available to the public by virtue of section 137(1) of the Courts of Justice Act. However, since the information is made available by the courts and the PGT is under no statutory requirement to make the requested information available to the public directly, the exception in section 21(1)(c) was found not to apply. Order PO-1736 confirmed the previous findings of this office that the information must have been collected and maintained specifically for the purpose of creating a record available to the general public. Senior Adjudicator Goodis made the following comments:

... this office has found that where information in a record may be available to the public from a source other than the institution receiving the request, and the requested information is not maintained specifically for the purpose of creating a record available to the general public, section 21(1)(c) does not apply. For example, in Order M-170, former Commissioner Tom Wright stated the following with respect to records in the custody of a police force:

The various witness statements and the officer's statement were prepared and obtained as part of a police investigation into a possible violation of law. In my view, the specific purpose for the collection of the personal information was to assist the Police in determining whether a violation of law had occurred and, if so, to assist them in identifying and apprehending a suspect. The records are not currently maintained in a publicly available form, and it is my view that section 14(1)(c) [the municipal equivalent to section 21(1)(c) of the Act] does not apply.

The ORC states that the Ministry of Consumer and Commercial Relations (MCCR) has a statutory duty to make individual land registration documents available to the public, and, as Commissioner Ann Cavoukian stated in PC-980049-1, the personal information contained in these documents is maintained at the Land Registry Offices specifically for the purpose of creating a publicly available record. The ORC submits, however, that the ORC has no similar statutory duty and the information at issue in this appeal regarding the individual purchasers was not collected and is not maintained by the ORC for the purpose of creating a record available to the general public.

Investigation Report I94-011P, in discussing the provisions of section 37 of the Act (which, like section 21(1)(c) refers to personal information that is "... maintained for the purpose of creating a record that is available to the general public") stated:

It is our view that, if applicable, section 37 excludes personal information from the privacy provisions of Part III of the Act only if the information in question is held by the institution maintaining it for the express purpose of creating a record available to the general public. **Other** institutions cannot claim the benefit of the exclusion for the same personal information unless they, too, maintain the information for the purpose of making it available
[IPC Interim Order PO-1786-I/May 17, 2000]

to the general public. In our view, this interpretation is not only reasonable, but also in keeping with one of the fundamental goals of the Act, namely "to protect the privacy of individuals with respect to personal information about themselves held by institutions." In the circumstances of this case, it cannot be said that the Ministry was maintaining the complainant's personal information (that was later disclosed in the Minister's letter) specifically for the purpose of creating a record available to the general public. Accordingly, section 37 of the Act did not apply. [emphasis in original]

Therefore, the ORC submits that, although some of the information in the records may be publicly available through the Land Registry system operated by MCCR, the information at issue is not made available by the ORC and is not publicly available for the purposes of section 21(1)(c).

This office has addressed this issue in several other previous orders as well. Information contained in police daily arrest sheets (Order M-849), dockets listing daily matters being heard under the Police Services Act (Order M-1053), a list of all doctors registered with the College of Physicians and Surgeons of Ontario (Order P-1635) and a list of the names and addresses of all persons licenced to drive in the province of Ontario (Order P-1144) have all been found to not satisfy the requirements of section 21(1)(c).

I agree with the conclusions in Order PO-1736 and the other authorities cited and, in my view, the circumstances of this appeal present a similar situation. Although the information may be available in transfer documents registered under the Land Registry system, that service is operated by MCCR, a separate institution, and the information is in a very different form. As previously noted, the ORC's records are in the form of lists. Unlike the Land Registry system, which provides access to the registered documents pertaining to all real property in the province, the lists created by the ORC contain selected information about a particular class of properties, namely those which have been sold by the Ontario government.

I accept the ORC's submission to the effect that the personal information in these lists is not maintained by the ORC for the purpose of creating a record available to the general public, and I find that section 21(1)(c) does not apply.

Section 21(1)(f)

Sections 21(2)(3) and (4) 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 individual relates. Section 21(2) provides some criteria for the institution 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 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) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The ORC claims that the presumed unjustified invasion of personal privacy at section 21(3)(f) applies, as well as the factor favouring privacy protection at section 21(2)(f).

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;

The ORC submits:

The amount paid by an individual purchaser for a property, and the property itself, are a description of this individual's "assets". Furthermore, the very fact of the transaction between the individual and the government of Ontario is a description of the individual's "financial activities".

The disclosure of this information would constitute a presumed unjustified invasion of personal privacy since the information describes an individual's assets and financial activities.

In Order M-536, the [Commissioner] held that an Agreement of Purchase and Sale between a Township and affected persons contains information "about the financial activities of the affected persons, specifically the terms and conditions for their purchase of a property from the Township". Furthermore, release of this information "would result in the disclosure of personal information which describes the financial activities of the affected persons within the meaning of the presumption ..."

The appellant disputes the applicability of section 21(3)(f), stating:

The information being sought ... would not disclose information relating to an individual's finances, income, assets, liabilities, worth, bank balances, financial history or activities or credit-worthiness. The [ORC] relies upon Order M-536 to establish this exemption. The circumstances of Order M-536 ... related to disclosure of the entire agreement of purchase and sale which information is not sought.

Elsewhere in its representations, the appellant seeks to distinguish Order M-536 by stating:

Clearly the agreement [of purchase and sale] would reveal information concerning the purchaser that would not be available in the Land Registry Office and would be information

which a purchaser might reasonably expect would be of a confidential nature. No such information is being sought in the case at hand.

In my view, the primary information in an agreement of purchase and sale that could be said to describe an individual's assets and/or financial activities is the very information at issue in this case, namely the individual's name, the purchase price and the location of the property. Therefore, in my view, the information under consideration in Order M-536 was of a very similar nature to the information about the individual purchasers that is at issue in this appeal.

In Order M-800, I considered the applicability of the presumption at section 21(3)(f) to another type of record that bears a striking resemblance to the records at issue in this appeal. The record consisted of a list of properties, including the owners' names, for which municipal taxes were in arrears. I found that this information fell under the presumption.

In my view, disclosure of the names, purchase price and property locations listed in relation to the individual purchasers (except those who consented to disclosure) would reveal information that describes their financial activities, and therefore I find that the presumption at section 21(3)(f) applies.

Section 21(4) does not apply to this information.

In keeping with the John Doe decision referred to above, I therefore find that the information at issue as regards the individual purchasers who did not consent to disclosure is exempt under section 21(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

As noted previously, the appellant's representations raised the possible application of this section. Upon receipt of these representations, I forwarded them to the ORC with a Supplementary Notice of Inquiry, inviting the ORC to submit representations on this issue. The ORC did not respond.

Having now found that the exemption at section 21 applies, I must consider the possible application of section 23. It has been established in a number of orders that in order for section 23 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner) (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)]. As stated at page 6 of Order P-1398:

An analysis of section 23 reveals two requirements which must be satisfied in order for it to apply: (1) there must be a **compelling** public interest in disclosure, and (2) this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

The Divisional Court provided guidance on the question of whether an established “compelling public interest” outweighs the purpose of an exemption in Ontario Hydro v. Mitchinson, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), in which the Court mentioned the need to “take into account” the public interest protected by the exemption in question.

The purpose of the exemption at section 21(1) is the protection of personal privacy, which is also one of the fundamental purposes of the Act. In my view, it would be appropriate to seek the views of all parties on whether there is a compelling public interest in the disclosure of this information and, if so, whether it would clearly outweigh the purpose of the section 21(1) exemption.

Accordingly, I will defer my decision on whether the application of section 23 is established in the circumstances of this appeal in order to allow me to send a Supplementary Notice of Inquiry to the ORC, the appellant, and those individual purchasers who did not consent to disclosure of their information and for whom this Office has apparently up-to-date addresses, inviting them to submit representations on this issue.

INTERIM ORDER:

1. I order the ORC to disclose the withheld portions of the records relating to the corporate purchasers, in their entirety, by sending the appellant a copy by **June 22, 2000**, but not before **June 19, 2000**.
2. I order the ORC to disclose the withheld portions of the records relating to the five individual purchasers who provided written consent to full disclosure, and the names and the purchase price of the sixth individual purchaser who consented to disclosure of this information, by sending the appellant a copy by **June 22, 2000**, but not before **June 19, 2000**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the ORC to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 1 and 2.
4. I remain seized of this matter.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ May 17, 2000