



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1506**

**Appeal MA-010164-2**

**Township of Chatsworth**



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## **NATURE OF THE APPEAL:**

The Township of Chatsworth (the Township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a “complete petition against [a named association] that was presented to Council on May 14, 2001 by [a named individual].”

The Township granted partial access to the petition, denying access to the names, signatures, addresses and emergency telephone numbers, on the basis of section 14 of the *Act* (invasion of privacy). The requester, now the appellant, appealed the Township’s decision.

Resolution of the appeal through mediation was not successful, and it was transferred to the adjudication stage. A Notice of Inquiry was sent to the Township initially, and I received representations in response. For the first time in its representations, the Township raised the possible application of the section 12 discretionary exemption claim (solicitor-client privilege). A modified Notice, which included this new issue, was then sent to the appellant, together with the Township’s representations in their entirety. The appellant also provided representations. A Notice of Inquiry was also sent to the 27 signatories of the petition, who had not been previously notified by the Township but whose interests could be affected by this appeal (the affected persons). Four signatories provided representations objecting to disclosure of any information relating to them; one Notice was returned as undeliverable; and the 19 other affected persons did not respond.

## **RECORD:**

The only record at issue is a 5-page petition relating to actions taken by the named association (the Association) in the context of a matter before the Ontario Municipal Board (the OMB). The covering memorandum and body of the petition have been disclosed to the appellant, along with the newspaper article that was attached to the last page. The balance of the petition, which remains at issue, consists of the affected persons’ names, addresses, signatures and emergency numbers (i.e. property/location “addresses” for emergency purposes).

## **DISCUSSION:**

### **LATE RAISING OF A NEW DISCRETIONARY EXEMPTION**

After receipt of this appeal, this office sent the Township a Confirmation of Appeal. The Confirmation indicated that, based on a policy adopted by this office, the Township would have 35 days from that date (that is, until August 31, 2001) to raise any discretionary exemptions not originally claimed in its decision letter. No additional exemptions were raised during this period.

Following the completion of mediation and the issuance of a Notice of Inquiry, the Township identified a new discretionary exemption claim in its representations (section 12). These exemptions were submitted on October 12, 2001.

Previous orders of this office have held that the Commissioner, or her delegate, has the power to control the manner in which the inquiry process is undertaken. This includes the authority to set time limits for the receipt of representations and to limit the time frame during which an

institution can raise new discretionary exemptions not originally cited in its decision letter, subject to a consideration of the particular circumstances of each case. This approach was upheld by the Divisional Court in the judicial review of Order P-883 (*Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), Toronto Doc. 220/89, leave to appeal refused [1996] O.J. No. 1838 (C.A.)).

The objective of the 35-day policy established by this office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.

The Township makes the broad assertion that the withheld information is exempt “on the ground of solicitor-client privilege” and submits:

... In light of the petition, it is debatable whether the majority of [the Association] members support the objection being advanced in the name of [the Association] in O.M.B. File Nos. R010075 and SO010010 (these appeals are currently scheduled for a hearing which begins on December 3, 2001). As a result, counsel for the Township in OMB appeals may use the petitions during cross-examination of [the Association] executive to support the Township’s anticipated argument that the majority of [the Association] membership does not support the position ostensibly advanced by [the Association] in the appeals. It is respectfully submitted that litigation privilege will attach to the identities of the petition signatories until the hearings O.M.B. R010075 and SO010010 have concluded.

The appellant takes the position that the signatories are not in a solicitor-client relationship, there is no existing or contemplated litigation against the signatories, and the list is not relevant to any OMB hearings.

The materials before me indicate that the Association has appealed two Township planning decisions to the OMB. The Township was aware of these appeals at the time it dealt with the appellant’s request under the *Act*, but raised only the section 14 exemption claim in support of its decision to deny access, despite having consulted with legal counsel in preparing the response letter. At the end of the mediation stage of the appeal, the Township was provided with a draft and a final version of the Report of Mediator, which outlines the facts and issues in the appeal and a summary of the results of mediation. Again, the Township did not identify the section 12 exemption claim in response to receiving these documents. It was only at the inquiry stage, the final stage of the appeal process, that the Township identified the possible application of this new discretionary exemption claim, with no explanation of any extenuating circumstances to take this case outside the parameters of the 35-day policy (see Orders P-658, P-883 and P-1137). In addition, the Township’s representations appear to indicate that this new exemption claim is time-limited, and would no longer apply when the OMB hearings have been completed. These hearings were apparently scheduled for early December of last year, and it is unclear to me

whether they have been completed or whether the record at issue in this appeal may have been produced and made publicly available in that forum.

For these reasons, and based on the materials provided by the parties, I have determined that this is not an appropriate case to depart from the 35-day policy, and I will not consider the Township's section 12 exemption claim further.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the *Act* defines "personal information", in part, to mean recorded information about an identifiable individual, including his/her address, telephone number, fingerprints or blood type [paragraph (d)], and the individual's name if it appears with other personal information relating to the individual [paragraph (h)].

The record contains the names, addresses, signatures and emergency numbers of the affected persons. It also reveals the fact that the affected persons have signed a petition asking the Township to take into account their objection to the position taken by the Association in appealing certain Township decisions to the OMB. In my view, this information is recorded information about identifiable individuals (the affected persons) and qualifies as personal information under paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

The record does not contain the appellant's personal information.

### **INVASION OF PRIVACY**

Where a requester seeks personal information of other individuals, section 14(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions listed in section 14(1) are present. The exceptions with potential application in the circumstances of this appeal are section 14(1)(a) and (f), which read:

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

- (a) if upon the written request or consent of the individual, if the record is one to which the individual is entitled to have access;

...

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy;

The Township submits that “none of the exceptions enumerated in section 14 of the *Act* would operate to permit the disclosure of this personal information.” As far as the section 14(1)(a) exception is concerned, the Township points out that “there is no indication on the face of the petition that the signatories intended to have their identifies made known to anyone other than the recipient of the petition.”

Two of the affected persons simply ask that their personal information not be disclosed, but offer no reasons or explanation. A third affected person states that the record is a “confidential advisory notice”, not a petition, and that it was a “private show of support” for Township Council and staff. This affected person also expresses concern that disclosing his/her personal information could have a negative impact on his/her business dealings with members of the local community. The fourth affected person points out that the signatories are members of a close-knit community and it would not be in anyone’s interest to disclose their names. This individual states that the Association started out as a good idea, but that it has become a vehicle for certain individuals to “further their own interests”.

The appellant submits that he does not believe the withheld information is highly sensitive nor does he expect disclosure would cause personal distress to any individuals. In his view, “the signatories must have been fully aware of disclosure of their names as it was being presented in open council.”

Having reviewed the record, I find that it is accurately characterized as a petition. It consists of a listing of the names and other personal identifiers of various individuals, all of whom provided their information in support of the following statements that are included in the portion of the record already disclosed to the appellant:

As members or non-members of the Association, we the undersigned do not support the executive on this issue.

We do not want our annual dues spent in this way and will not contribute any extra money at all for this cause.

There is nothing on the face of the record to indicate that it was provided in confidence, as suggested by the one affected person, nor do I accept any distinction between its characterization as a “advisory notice” as opposed to a petition.

Previous orders have dealt with the issue of whether personal information contained on a petition should be disclosed in response to an access request under the *Act* or its provincial counterpart (the provincial *Act*) (see Orders 154, 172 and P-516). In Order 154, former Commissioner Sidney B. Linden dealt with a petition that was presented to the mayor and members of a city council. He stated:

After reviewing [the relevant records at issue in that appeal], and taking into consideration the circumstances surrounding the creation of this information, it is my view that the author of the covering letters and the signatories of the petition can be found to have consented to the release of their personal information.

While the consent of these individuals is not explicit, it can, in my view, reasonably be implied in the circumstances of this case. It is significant that the individuals who signed the petition voluntarily lent their support to a matter of public concern. Petitions as a general rule are not intended to be kept secret and it would appear from the face of this record that the personal information contained in the record has already been provided to a number of recipients including the mayor and members of the Scarborough City Council. In my view, it is clear from the actions of those involved with the petition that they have consciously decided to forego some element of their personal privacy by taking a public stand on an issue of importance to them.

He went on to find that the personal information contained on the petition fell within the scope of the section 21(1)(a) exception contained in the provincial *Act* (which is identical to section 14(1)(a) of the municipal *Act*) and ordered the information disclosed.

Former Adjudicator John McCamus applied the reasoning from Order 154 in two subsequent orders (Orders 171 and 172). In finding that the petition at issue in these appeals fell within the scope of section 21(1)(a) of the provincial *Act*, he elaborated:

Petitions by their very nature are not documents that have an aura of confidentiality. The signatories to a petition do so voluntarily. By including their name on a petition, a signatory takes a public stand with respect to the issue being petitioned for. Petitioners are aware that they are revealing personal information about themselves when they add their names to a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause which is the subject of the petition.

Further, petitions are usually collected in a fairly public manner. Proponents of a petition often seek additional signatories in shopping malls, in front of public buildings or in door to door campaigns. Individuals are approached to add their names to the petition and are given the opportunity to read the body of the petition. Upon doing so, the individual, who may or may not eventually become a signatory, will have the opportunity to see the names, addresses and signatures of those who have already lent their support to the petition.

Adjudicator McCamus went on to find that, even if the section 21(1)(a) exception did not apply, he would have concluded that release of the names of the petitioners in those appeals would not constitute an unjustified invasion of personal privacy. In that regard, he stated:

... Even if the public character of the document does not properly give rise to a holding that disclosure may be made on the basis of consent within the meaning of section 21(1)(a) [of the provincial *Act*], surely this character is relevant in a determination of whether disclosure constitutes an unjustified invasion of personal privacy. The privacy interest to be weighed against disclosure, if it exists at all, is not of significant weight. The right to petition the government for redress of grievances is a valued and important part of our political tradition. It is

not part of that tradition, however, that petitions should be created and, indeed, acted upon by the government under a veil of secrecy.

I agree with the findings and reasoning of these previous orders, and find that they are equally applicable to the petition at issue in this appeal. I accept that the affected person who signed the petition did so voluntarily and lent their support to a matter of some public concern to them. However, there is nothing on the face of the record to indicate that it was intended to be a confidential document, nor is it reasonable to conclude any implied expectation of confidentiality in the circumstances. The petition is addressed to the "Township of Chatsworth", with a copy to the Director of Planning for Grey County, and was tabled for consideration at a meeting of the Township Council. Based on the information provided by the parties in the context of this appeal, I cannot determine with certainty that the petition is a public document, but unless the Council meeting was a validly constituted *in camera* meeting under the *Municipal Act*, I can think of no reason why the petition would not be made available to residents of the Township as a matter of routine business. In any event, it is clear that it was not a confidential document, and I find that in signing and providing their personal information on the petition, the affected persons implicitly consented to this personal information being made available to others. Accordingly, the requirements of the section 14(1)(a) exception are present, and the personal information contained in the petition does not qualify for exemption under section 14(1) of the *Act* and should be disclosed to the appellant.

ORDER:

1. I order the Township to disclose the all remaining portions of the record, consisting of the names, signatures, emergency numbers and mailing addresses on the petition, to the appellant by providing him with a copy of this information no later than **March 12, 2002** but not earlier than **March 7, 2002**.
2. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Township to provide me with a copy of the record that is disclosed to the appellant.

Original signed by:  
Tom Mitchinson  
Assistant Commissioner

February 5, 2002