



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1847**

**Appeal PA-990414-1**

**Ministry of Transportation**



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## **NATURE OF THE APPEAL:**

This is an appeal under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Ministry of Transportation (the Ministry). The Ministry received a request, on August 19, 1999, for access to all its records which "address any specific interest" held by the Ministry in a particular property in the Region of York.

The Ministry identified 115 documents responsive to the request. In the case of 15 records, the request was transferred to other institutions with custody of the records sought.

The Ministry initially made a decision to deny access to all but three of the records in its custody. This decision was appealed by the person who requested the documents. In the mediation stage of the appeal, the appellant reduced the number of records sought and the Ministry reduced the number of records which were being withheld. Only 52 records remain at issue in this appeal.

The Ministry is relying on the privacy exemption in section 21 of the *Act* as the basis for its refusal to allow disclosure of the records still at issue. The appellant has challenged the applicability of section 21 and has raised, as an additional issue, the possible application of the "public interest override" in section 23 of the *Act*.

It is not disputed that the Ministry has purchased the property at issue. The Ministry made the purchase pursuant to a policy which allows the Ministry, in certain circumstances, to acquire land for possible future use in a highway expansion. The Ministry has taken the position that disclosure of the documents at issue must be refused, pursuant to section 21(3)(f) of the *Act*, because the records contain personal information relating to the financial affairs of the vendors of the property.

During mediation, the appellant clarified that the request was made for the purpose of learning the basis on which the Ministry decided to purchase the property and whether or not the Ministry complied with the *Environmental Assessment Act* and its own policy in making the purchase. The appellant is not seeking access to the names of the vendors nor is he seeking access to information with respect to the purchase price of the property in question.

The individuals who sold the property to the Ministry are persons whose personal privacy may be affected by this appeal. I have sent a Notice of Inquiry to these individuals, as affected parties, as well as to the Ministry and the appellant, identifying the issues in dispute in this appeal. The vendors have not responded to make representations or to provide consent to any disclosure of their personal information. The Ministry and the appellant have both submitted representations.

## **CONCLUSION:**

I find that 42 of the records at issue in this appeal contain information which is exempt from disclosure under section 21 on the basis that disclosure would constitute an unjustified invasion of the personal privacy of persons other than the requester. There is no compelling public interest in the disclosure of these records which would outweigh the purpose of the exemption.

I find that the remaining records do not contain personal information and accordingly are not exempt from disclosure under section 21.

## **RECORDS:**

The records at issue consist of correspondence, particularly between the Ministry and the vendor and between the Ministry and local municipal and regional offices, internal memoranda, notes, e-mails, fax cover sheets and other related documents.

The records have been identified in the Ministry's index as:

38 to 46; 52 to 84; 86 to 90; 93; 94; 96; 97; and 112.

Some records identified under a single record number consist of more than one document attached to a cover memo or fax cover sheet.

## **DISCUSSION:**

There are three parts to the determination to be made in this appeal.

The first question to be decided is whether or not the documentation at issue contains personal information of individuals other than the requester. If the records do contain personal information as defined in the legislation, I must determine if the records are on that basis exempt from disclosure. If the records are found to be exempt from disclosure under the *Act*, I must then consider whether there is nonetheless a compelling public interest in disclosure which would clearly outweigh the purpose of the exemption.

## **PERSONAL INFORMATION**

"Personal information" is defined in section 2(1) of the *Act*. The following paragraphs are relevant to this appeal:

"personal information" means recorded information about an identifiable individual, including,

- (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** [emphasis added],
- (d) the address, telephone number, fingerprints or blood type of the 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,
- (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 has particularly relied upon paragraphs (b), (d), (f) and/or (h) in denying access to the records.

The records at issue in this appeal can be broken down into several subsets of documents:

- correspondence between the Ministry and the vendors;
- correspondence between the Ministry and municipal/regional authorities;
- land appraisal report;
- internal Ministry memoranda;
- multiple listing agreement.

I will consider each of these groups of documents in turn.

### *Correspondence between the Ministry and the Vendors*

The majority of the records at issue (34 records) are letters exchanged between the Ministry and the affected parties, the vendors of the relevant property, between 1996 and 1999. Fax cover sheets and, in a few cases, handwritten notes, are attached to these letters. Also included in this group of records are the handwritten notes of a telephone conversation between a Ministry staff person and a vendor. As a group, these records comprise the written record of the negotiations between the affected parties in this appeal and the Ministry, with respect to the eventual purchase of the property by the Ministry.

Having reviewed the records, I find that all of this correspondence, with the exception of record 54, contains personal information about identifiable individuals, including names and addresses, and relates to negotiations between those individuals and the Ministry in respect of the purchase of property. This information would fall within the definition of "personal information," and particularly within paragraph (b) of that definition, as information relating to a financial transaction, and paragraph (f), as correspondence of a private or confidential nature.

The appellant has argued that the names and addresses of the vendors could be severed, together with the actual purchase price, where this information appears in the records. Previous decisions of this Office have held that, where an individual can be identified from information in a record notwithstanding the removal of their names, the information will fall within the definition of "personal information" under section 2(1): P-1208, P-975, M-791.

In this case, the vendors could be identified through information otherwise available in public records, including the provincial land registration system. Accordingly, I am satisfied that removal of the names and

addresses of the vendors will not have the effect of taking the information in these records outside of the definition of “personal information” in the *Act*.

The records in this group of documents are identified by the Ministry as follows:

38 to 44; 52; 53; 55 to 60; 63; 65 to 67; 69; 75 to 77; 79; 80; 82 to 84; 86; 88; 89; 94; 97.

Record 54 is not part of the same line of correspondence. It is a letter to the vendors from the Ministry, reporting on the results of recent testing in respect of the well water on the property. There is no personal information, including financial information, in the letter, other than the names and addresses of the vendors which can readily be severed.

### *Correspondence between the Ministry and Regional/Municipal Authorities*

In the course of the negotiations between the Ministry and the affected parties with respect to the possible purchase, the Ministry made inquiries of the local municipal and regional authorities as to the permitted uses and development potential of the property.

Included in the record are two letters to the Regional Municipality of York, dated March 13, 1998 and May 21, 1998 (records 62 and 70), as well as a response dated April 22, 1998 (record 64, attachment). The March letter appears in duplicate in the record both as record 62 and as an attachment in record 64.

In addition, there are two letters to the Town of East Gwillimbury, dated March 12, 1998 (record 61) and May 14, 1998 (which appears twice in the record, as record 68 and as an attachment to record 64). A reply letter from the Town, dated April 8, 1998, is included as an attachment to record 64.

All of the letters from the Ministry in this group include the names and addresses of the affected parties in the reference line above the body of the letter. Otherwise, the letters consist of discussion and questions with respect to the permitted land uses on the relevant property. The two letters of reply respond to the land use questions, and do not include any personal information.

Although the contents of these letters would have affected the purchase/sale negotiations between the Ministry and the vendors, I find that the letters in this group do not contain personal information, other than the identifying information readily severable from the reference line in the Ministry letters. The content of the letters is entirely in respect of the planning and land use issues affecting the property. This conclusion is consistent with previous decisions of this Office that have found that where records are **about a property**, and not **about an identifiable individual**, the records may be disclosed, with appropriate severances, notwithstanding the possibility that the owners of the property may be identifiable through searches in land registration records and/or municipal assessment rolls: Orders 23, M-188 and M-189.

The records in this group of documents are identified by the Ministry as follows:

61; 62; 64; 68 and 70.

### ***Land Appraisal Report***

Record 78 consists of a report prepared by a private land appraiser for the Ministry. The report is in letter form and was received by the Ministry on July 29, 1998. The report summarizes the contents of previous correspondence to the Ministry, including the letters dated April 8, 1998 and April 22, 1998, from the Town of East Gwillimbury and the Regional Municipality of York respectively. The letter concludes with an assessment of the likelihood that redevelopment plans would be approved for the property at issue.

This letter contains no information which would fall within the definition of “personal information” in the legislation, with the possible exception of a reference to the municipal address of the relevant property. The address line can readily be severed. The report is about the property and is not about the individual property owners.

### ***Internal Ministry Memoranda***

There are 11 records in this group of documents.

#### Records 71 to 74

Records 71 to 74 consist of undated e-mail communications between Ministry staff which discuss the negotiations with the affected parties regarding the possible acquisition of their property. Each of these messages contains information identifying the vendors by name and discussing the position of the vendors in the negotiations in respect of the purchase. Although the names of the vendors could be severed, I am satisfied that these records fall within paragraph (b) of the definition of “personal information,” because they contain information relating to a financial transaction involving the vendors as affected parties. This is consistent with my treatment of the correspondence between the Ministry and the affected parties.

#### Record 45

Record 45 consists of three internal memoranda, prepared in 1997, to support a request for Ministry approval with respect to the possible advance purchase of the relevant property. A topographical map is attached to the memoranda. The memoranda briefly discuss the potential and current impact of the proposed highway on the use of the property. There is no personal information included with the exception of the name and address of the vendors in the reference line and the approved sum for advance purchase, all of which could readily be severed from the documents.

#### Record 46

Record 46 includes the same three memoranda which make up record 45, together with a draft of one of the memorandum and a form entitled “Property Request” which is filled in with handwritten notes setting out the property description and the “Reason for Request.” This latter form contains no personal information.

#### Record 87

Record 87 is a memorandum dated November 12, 1998, dealing with the "Proposed Advance Purchase" of the relevant property. It has been prepared by the "Property Section" of the Ministry. The memorandum summarizes the information available to the Ministry with respect to the appraised value of the property for residential use, including the results of an appraisal obtained by the vendors. It sets out the basis upon which the Ministry arrived at its position with respect to the estimated market value and concludes with a recommended purchase price to be offered to the vendors.

This document forms part of the documentation created to support the financial transaction between the Ministry and the affected parties, and includes the numbers associated with the various appraisals and other information touching on the position of the vendors in negotiations. As such, I find that it contains considerable personal information, including information falling within paragraph (b) of the definition, which, if severed, would only leave the shell of the contents.

#### Record 90

Record 90 is a form entitled "Appraisal Compensation Approval" and dated November 18, 1998. The only information inserted on the form is the names of the vendors and the "Listing Total," together with an amount for market rent. This information would fall within the definition of "personal information."

#### Records 93 and 112

Records 93 and 112 can be considered together.

Record 93 is a form entitled "Negotiation Report." It is dated November 27, 1998, identifies the vendors and includes a description of the property, a reason for purchase and a sum identified as the market value and settlement amount.

Record 112 is a form entitled "Property / Agreement Processing Detail Sheet. It is largely blank except for the names of the vendors and financial information relating to the purchase.

Both these records form an integral part of the documentation in respect of the financial transaction between the Ministry and the affected parties, and as such fall within paragraph (b) of the definition of "personal information."

#### Record 96

Record 96 consists of a Ministry document entitled "Residential Property Preliminary Site Screening Form," together with attached cover e-mail, handwritten forwarding information and a site drawing. The form itself identifies the property at issue and the vendors, and then sets out information under the following headings: Site Characteristics and Activities of Potential Environmental Concern; Site Photographs; Future Action. There are no photographs attached to the form, and the Future Action section is not completed.

The substance of the form is checked off answers to a series of questions under the first heading concerning topics like the septic system and the possible presence of chemical products on the property. There is no

information qualifying as “personal information” on this form other than the names of the vendors which can readily be severed.

### ***Multiple Listing Agreement***

This document (record 81) is entitled “Multiple Listing Agreement (Residential).” It is a standard text form to which as been added the names of the vendors, the address of the property, the listed price and dates and signatures. As such, the agreement contains information qualifying as “personal information” under section 2(1) of the *Act*.

### ***Conclusion***

I have found that a number of the records contain no information which would qualify as “personal information” under section 2(1) of the *Act*, other than brief references, readily severable, identifying the vendors, their address, or the purchase price of the relevant property. In refusing to disclose these documents, the Ministry has relied on the mandatory exemption in section 21 for records containing personal information. As a result of my finding, the following documents could not qualify for the exemption and must be disclosed to the appellant with the appropriate severances made:

45, 46, 54; 61; 62; 64; 68; 70, 78 and 96.

In the case of the remaining records, I have found that they contain information which would qualify as “personal information” within the meaning of section 2(1) of the *Act*. Accordingly, in the case of these records, I must consider whether the information in the records is protected under the exemption in section 21, and if so, whether there is a compelling public interest in disclosure which would outweigh the purpose of the exemption.

### **INVASION OF PRIVACY**

Where, as in this case, a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. Section 21(1)(f) establishes an exception where disclosure of the information would not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in applying section 21(1)(f) to determine whether or not a 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 institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that a presumption against disclosure 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].



In this case, the records which have been found to contain personal information consist of:

- correspondence between the vendors and the Ministry which constitute the written negotiations between them regarding the sale of the property (records 38 to 44; 52; 53; 55 to 60; 63; 65 to 67; 69; 75 to 77; 79; 80; 82 to 84; 86; 88; 89; 94; 97.);
- e-mail communications within the Ministry which discuss the negotiations with the vendors over the property (records 71 to 74);
- internal Ministry memoranda, including one prepared by the Property Section (record 87) and three completed internal forms (record 90, 93 and 112) which contain information on the estimated value of the vendor's property, the listed price and the actual purchase offer; and
- residential multiple listing agreement (record 81).

The Ministry has submitted that the presumption against disclosure in section 21(3)(f) applies to all of the records at issue in this appeal. The Ministry relies on the fact that the records contain information with respect to mortgages, land appraisals and the valuing of and final offer for the property. The appellant, in response, takes the position that much of the financial information at issue is already publicly available through the provincial land system, and that any privacy interest in the information has in effect been waived. He also relies on the fact that he is not seeking information identifying the vendors or revealing the purchase price.

Section 21(3)(f) reads:

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

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

The largest group of documents under consideration is the 33 letters between the vendors and the Ministry. These letters describe the position of the vendors in the financial transaction under negotiation, and, as a group, set out a history of their on-going financial activity with respect to the proposed development and the marketing of their property.

The e-mail correspondence mirrors the discussion in the mailed correspondence and must be considered in the same way as a history and description of the vendors' dealings in respect of their property. Each of these documents describes and discusses the value of an asset of the vendors, specifically the relevant property.

Turning to the memorandum prepared by the Property Section of the Ministry, I note that it describes in detail the valuation of the property by the various appraisers. This memorandum and the three Ministry

forms were completed at a late stage in the purchase/sale negotiations and contain primarily the financial information related to the final offer. Unlike the records found not to contain personal information, these records as a group are focussed on the financial aspects of the property transaction, and not on collateral factors such as environmental restrictions on the land or its development potential.

Having reviewed the contents of these records, I find that granting access to the correspondence, the e-mail communications, the Property Section memorandum and the Ministry forms would result in the disclosure of personal information which describes the financial activities of the affected persons and which falls within the presumption contained in section 21(3)(f). In response to the appellant's representations, I note that none of these records are otherwise in the public domain and that, in any event, the exemption is not subject to an exception allowing disclosure of personal information in situations where that information is otherwise publicly available through other agencies or government bodies.

The final record in this group is entitled "Multiple Listing Agreement (Residential)." This document contains the listing price for the property and accordingly also falls within the exemption in section 21(3)(f). Moreover, the appellant has stated that he is not interested in specific personal information of this nature.

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls within one of the exceptions to the exemption under section 21(4) of the *Act* or where a finding is made that section 23 of the *Act* (the public interest override provision) applies to the personal information contained in the record [See Order PO-1764]. The exceptions in section 21(4) are not raised as an issue in this appeal, and the only remaining issue is the possible application of section 23.

## **PUBLIC INTEREST IN DISCLOSURE**

### ***Introduction***

In this case, the appellant has taken the position that there is a compelling public interest in the disclosure of the records at issue which would, pursuant to section 23 of the *Act*, outweigh the purpose of the exemption claimed by the Ministry. Section 23 provides:

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.

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] O.J. No. 488 (C.A.)].

If a compelling public interest is established, it must 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. An important

consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption. [See Order P-1398]

In this case, the Ministry is relying on the exemption in section 21 of the *Act*. It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. [See Order PO-1705]

The *Act* is silent as to who bears the burden of proof in respect of section 23. However, a number of Orders have stated that it is a general principle that a party asserting a right or duty has the onus of proving its case. I recognize that this onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. [See Order P-241]

### ***Appellant's Submissions***

The appellant, in his representations, has enumerated a number of "public interest" questions which he believes may be answered by the information in the records at issue in this appeal. These questions concern:

- whether the best use of the relevant property is for a provincial or national historic site and whether this was properly considered by the Ministry;
- why consultants for the Ministry reversed their position on the property's importance as a historical site;
- whether or not the Ministry followed its own policy and complied with the *Environmental Assessment Act* in purchasing this property prior to obtaining approval from the Ministry of the Environment;
- whether the Ministry makes a practice of bidding against other potential purchasers;
- whether the Ministry exercised "due diligence" in making this purchase and in assessing the value of the property based on its "best use."

### ***Ministry Submissions***

The Ministry's representations take the position that the appellant is asserting a private interest in respect of the records sought, because the proposed highway extension would affect his property. With respect to the public interest in disclosure, the Ministry notes that it has already held public meetings in respect of the proposed highway extension. The Ministry argues that:

The requested records concern the acquisition of a specific piece of property by the Ministry, involving private individuals who have been asked and have **opposed** disclosure of the records to the Appellant, who is not affected by the acquisition. The individuals whose dealings with the Ministry are contained in the records at issue deal with the Ministry on an implicit understanding that their financial affairs would be kept confidential. Disclosure of these records would have a chilling effect on property acquisitions by the Province if the individuals involved knew that people who are not a party to their property dealings are permitted to have access to its details.

## *Conclusion*

It will be apparent from the description of the records in this decision that only some of the appellant's questions are likely to be addressed by the information contained therein. To the extent that there is information in the records that addresses the appellant's concerns, that information is most likely to be contained in the records which I have already found that the Ministry must disclose, which records are primarily about the property itself and not about the particulars of the financial transaction between the Ministry and the vendor. In fact, the appellant has taken the position that he does not seek information as to the actual purchase price or the identity of the vendors.

The records which have been found to be exempt from disclosure under section 21 consist of:

- the written purchase negotiations, in correspondence between the Ministry and the vendors;
- the internal e-mail discussing those negotiations;
- the internal memoranda and forms recommending a purchase price based on summarized appraisals and forming the paperwork in support of the purchase;
- the multiple listing agreement.

All of these records focus on the financial transaction, and the negotiations towards that transaction, and contain information concerning an asset belonging to the affected parties in this appeal.

I am not satisfied that the appellant has established a public interest in disclosure of these records which can override the privacy interests of the vendors in respect of their financial information.

## **ORDER**

1. I order the Ministry to disclose the non-severed portions of the following records: 45, 46, 54; 61; 62; 64; 68; 70, 78 and 96, by January 30, 2001 but not before January 23, 2001.

For greater certainty, I have provided a highlighted copy of these records to the Ministry with this Order. The highlighted portions of the records shall not be disclosed to the appellant.

2. I uphold the decision of the Ministry to refuse to disclose the remaining records.
3. In order to verify compliance with Provision 1, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Katherine Laird  
Adjudicator

\_\_\_\_\_ December 21, 2000