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

ORDER MO-1392

Appeal MA_000165_1

The Toronto and Region Conservation Authority

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NATURE OF THE APPEAL:

The Toronto and Region Conservation Authority (the TRCA) received a request for access to information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to records relating to the TRCA's purchase of a specific property from a named individual (the affected person), including property appraisals and the offer to purchase.

The TRCA responded to the request by stating that access to the responsive records was being refused on the basis of section 11(c) and (d) of the *Act* (economic and other interests) since:

> . . . the information could reasonably be expected to prejudice the economic interests of the TRCA or the competitive position of the TRCA or be injurious to the financial interests of the TRCA.
>
> Specifically, the release of information with respect to property valuations could prejudice the TRCA's ability to obtain land at a fair price in the future.

The TRCA also indicated that access to the information in the records was being denied on the basis of section 14(1) (personal privacy). The TRCA stated:

> Specifically, the information requested involves a financial transaction and relates to an individual's finances, financial history or activities. This information cannot be released without consent of the individual pursuant to section 14(1)(a).

The requester (now the appellant) appealed the TRCA's decision to this office.

During the mediation stage of the appeal, the affected person wrote to the TRCA stating that she believed the information in the records was her personal information, and that she objected to its disclosure.

Also during the mediation stage of the appeal, the TRCA issued a revised decision in which it provided the appellant with severed copies of two appraisal reports, and an agreement of purchase and sale with respect to the property. The TRCA advised that it was withholding portions of these records pursuant to the exemptions claimed earlier, namely sections 11(c), 11(d) and 14(1) of the *Act*.

As a result of the revised decision, the appellant advised that he was still seeking only some of the information withheld from the three records, as described below.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the TRCA, which provided representations in response. I then sent a Notice of Inquiry to the appellant, together with the non-confidential portions of the TRCA representations. The appellant sent representations in response. I then sent a Notice of Inquiry, together with the appellant's representations, to the affected person. I did not receive representations from this individual.

THE RECORDS

The records at issue in this appeal are described as follows:

Record 1	Appraisal Report dated August 30, 1999 (at issue: three figures severed from page 2 of the summary, a sentence severed from the narrative addendum, and a figure severed from the final page)
Record 2	Appraisal Report dated October 18, 1999, with cover letter (at issue: severances on page 2 of the cover letter, and on pages 23, 26 and 29 of the report)
Record 3	Option to Purchase agreement dated November 11, 1999 (at issue: a figure severed from the first page)

DISCUSSION

ECONOMIC AND OTHER INTERESTS

Introduction

The TRCA claims that the information at issue is exempt under both section 11(c) and (d) of the *Act*. Those sections read:

> A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

Broadly speaking, section 11 is designed to protect certain economic interests of institutions covered by the *Act*. Sections 11(c) and (d) both take into consideration the consequences which would result to an institution if a record was released.

In order to establish the application of section 11(c) or (d), the TRCA must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" as described in those sections [Order PO-1747].

Section 11(c): economic interests or competitive position

Introduction

In Order P-1190 (upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Assistant Commissioner Mitchinson stated in reference to the provincial counterpart of section 11(c):

> In my view, the purpose of section 18(1)(c) is to protect the ability of institutions such as Hydro to earn money in the market-place. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.

Representations

The TRCA submits:

> The [TRCA] is a body corporate under the Conservation Authorities Act of Ontario. Pursuant to the objects and programs of Authorities as defined in the Act, the TRCA has approved a Greenspace Protection and Acquisition Project, 1996-2000, (copy enclosed), to provide relief from flood and erosion hazard, to carry out conservation and regeneration measures; to protect environmentally significant greenspace lands; and to provide for the rehabilitation of degraded areas.
>
> Funding for this project is secured from the Authority's statutory partners, the City of Toronto, the Regions of Peel, York and Durham, the Town of Mono and the Township of Adjala-Tosorontio as well as the Province of Ontario. The TRCA also secures funding from municipalities within its watersheds, private donations and the Conservation Foundation of Greater Toronto. The TRCA has purchased literally thousands of properties involving thousands of acres over its 43 year history (Annual Report enclosed). The purchase of property requires a high level of trust and confidence on both sides. As a public land purchaser, the integrity of the TRCA is critical to working successfully in the real estate field. Release of information supplied in confidence will have a detrimental effect on the ability of the TRCA to fulfill its land acquisition mandate.
>
> Accordingly, the TRCA is a public organization entrusted with responsibility for spending significant public funds to secure greenspace lands. Additionally, the TRCA has an equally high level of public accountability to private donors for spending their donations in the most cost effective and responsible manner. Aside from the obvious responsibility as a public body to demonstrate proper and efficient use of funds, the TRCA must continually maintain the trust and confidence of its public and private donors. In other words, TRCA competes in the market place to buy lands at fair market value for the purposes of its projects, and has the added burden of continual public scrutiny through its public meetings that the prices paid are indeed fair and competitive.

> The many private interests with whom TRCA competes in the purchase of land have no such similar level of public scrutiny and open discussion of land values. Appraised values are confidential because public knowledge of such values by competing interests would result in the TRCA having to pay more to secure the lands in question. Put very simply, the other bidders for a piece of property would benefit from knowing the appraised value by using that information to outbid the TRCA or force TRCA to spend more than is necessary. This is injurious to the TRCA financial interests.
>
> In the specific case under discussion, the deal has closed so revealing the appraisal values will not [affect] the price paid for the property in question. But this is only one [of] a number of similar properties in the area in which the TRCA has an interest . . . If private competitors were aware of the appraised value being used by TRCA for this purchase, they could make the logical assumption that the same value will be used for similar properties. The TRCA would end up having to pay more than it would otherwise have paid. This is prejudicial to TRCA's competitive position as a real estate buyer in the greater Toronto market place.
>
> The greater Toronto real estate market is extremely competitive at the present time. Any lands with potential for development (and the lands described have that potential) are very attractive, particularly lands such as these which border valley and conservation lands. The advice given TRCA by its professional appraisers and its legal advisors who work in the real estate field, is that this sort of appraisal information is of immense value to competing interests in determining how they bid for lands.

The appellant submits:

> Firstly, [in its representations, the TRCA states] that [it] "has the added burden of continual public scrutiny through its public meetings that the prices paid are indeed fair and competitive." I believe the logical question to be asked here is how they prove through scrutiny at public meetings that the prices are fair and competitive, if they do not reveal the estimate values in any appraisals which they obtained. To simply state at a public meeting that the price paid was for example [stated figure] is irrelevant, without providing the appraised value to facilitate a valid comparison by the public. How does the general public know that TRCA paid a "fair and competitive" price, without the supporting appraisal. TRCA obtains appraisals in the first place to establish a "bench mark" for negotiating with the owner of a property. They also use these appraisals to protect themselves against accusations that they overpay when spending public money to acquire property. If TRCA uses these appraisals to establish a fair price when acquiring property, why should they be allowed to withhold such proof that:
>
> 1) they are treating the public fairly in dealing on property matters

2) they are acting in a prudent and fiscally responsible manner when spending public funds

If TRCA reveals the appraised values of properties at these public meetings, they should have no hesitation in revealing the same appraised values in response to my FOI request. If they do not wish to reveal the appraised value when negotiations for the purchase of the appraised property are in progress, I accept that. However, once the property is purchased and the deal is closed, negotiations are obviously at an end and TRCA has an obligation to subject the deal to public scrutiny to demonstrate that they are complying with the two responsibilities noted above.

In their [representations], TRCA indicates that their statutory partners include the City of Toronto, Regions of Peel, York, Durham, etc., as well as the Province of Ontario. The writer further states that TRCA is a public organization, entrusted with the responsibility for spending *public funds*. This brings up the obvious question of public accountability. The writer states that not only does TRCA compete in the market place to buy lands at fair market value for the purposes of its projects, it must demonstrate to the public that the prices paid are fair and competitive. I have worked in the property field for 30 years and in that time, no one has devised a better way for a public body to demonstrate its accountability than having the property appraised and providing public access to the appraisal, which can then be compared to the price paid. If they are reasonably close to each other, the public would be reassured that TRCA did not overpay. However, if the appraised value and price paid are many thousands of dollars apart, TRCA should be held accountable and should be prepared to demonstrate the justification for the sizeable price difference.

The fact that private parties do not have to subject their property dealings to public scrutiny is irrelevant, because they are not spending public money. TRCA claims that appraised values are confidential because TRCA would have to pay more to secure lands if they revealed these values. However, their logic escapes me! I am not suggesting that TRCA should reveal the appraised value before negotiating the deal. I am simply requesting that they reveal this information after the deal is closed. How could this force TRCA to pay more to acquire a property, when the appraised value would not be revealed until after the deal was closed. At that time, other bidders cannot do anything to force TRCA to spend more than is necessary, because TRCA already owns the property. For TRCA to simply claim that they would be forced to pay more if they revealed the appraised value after they have already bought the property and the deal has been closed is a frivolous argument. TRCA admits this in the first sentence in the [fifth paragraph of its representations].

However, the TRCA logic gets even stranger in this same paragraph . . . They now claim that if private competitors are aware of the appraised value for purchase of Property "A", they would make the logical assumption that the same value would be used for Property "B" if it was similar. TRCA's opinion as to

> what they felt property "A" is worth would be known once the deal is closed, because the price paid by TRCA is a matter of public record at the Land Registry or Land Titles Office. At this point, private competitors can easily find out what TRCA actually paid for the property, which is far more significant to them than what it was appraised at. If for example, I owned Property "B" and I found out from the Land Titles Office records that TRCA paid [stated figure] to acquire [named property], why would I be concerned with what it was appraised at? I already know the actual price paid by the "willing buyer" to the "willing seller". Even if TRCA obtained several independent appraisals ranging from $250,000 to $325,000, these appraised values are irrelevant, because the price actually paid was [stated figure]. The competing bidders are only interested in what TRCA actually paid for the property and for them to claim that they would be forced to pay more is an argument without merit [emphasis in original].

The appellant also submits that other municipal and provincial institutions routinely provide access to property appraisals once the particular transaction has been completed.

I am satisfied that if the appraisal figures in Records 1 and 2 were disclosed at any time prior to the closing of the transaction, disclosure could reasonably be expected to harm the economic interests or competitive position of the TRCA. This finding would be consistent with previous orders of this office [see, for example, Orders MO-1228, MO-1258]. In these cases, there was evidence of harm with respect to future negotiations. However, I am not persuaded by the TRCA's argument that this type of harm could reasonably be expected to occur *after* the completion of the transaction. In my view, once the actual purchase price is known, the appraisal figures have little or no value to the TRCA's competitors respecting any future negotiations on similar properties.

In addition, the TRCA has not persuaded me that the remaining information severed from Records 1 and 2, apart from the appraisal figures, could reasonably be expected to cause harm to the TRCA as described in section 11(c) of the *Act*. Similarly, there is no basis on the material before me to find that section 11(c) applies to Record 3.

Section 11(d): financial interests

The TRCA intended its representations as set out above under section 11(c) to also apply to section 11(d). For similar reasons, I find that the TRCA has failed to establish that disclosure of the information in any of Records 1, 2 or 3 could reasonably be expected to be injurious to the financial interests of the TRCA.

PERSONAL INFORMATION

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

The TRCA submits:

> This applies directly to Record 3, and indirectly to Record 1. The owner of the land purchased by the [TRCA] is an individual . . . Record 3 is a purchase and sale agreement with her and we have agreed to the release of her name and address since this is a matter of public record which she does not dispute. The disputed figure is the purchase price of the lands, ie the money paid to her by TRCA for her land. This is personal information which is directly identified to her in the document.
>
> Order 13 refers to appraisal information and estimated values. In [the affected person's] situation we are speaking of significant funds paid to her. She has the right to have this information protected just as she would her bank balance.

The appellant submits:

> . . . I contend that the information in the appraisal relates to the property . . . and it should not be considered "personal information" . . .
>
> Additionally, it appears that TRCA is only opposing release of Record 3 under authority of Section 14(3)(f), but not Records 1 and 2.
>
> . . . . .
>
> The second issue is the [TRCA's] claim that the purchase price paid to [the affected person] for her property is confidential and personal information. As I have said previously, this is clearly false, since the instant that TRCA registers the deed at the Land Registry Office, the information becomes public and it can be accessed by anyone. [The affected person] has no control over this and TRCA has no control over this. I concur that the information in the TRCA appraisal on the . . . property is privileged until the deal is closed and she has the right to have this information protected while negotiations are in progress, just as she would her bank balance. However, once the deal is closed, the amount she was paid becomes public knowledge. Many people do not know that the price at which they sell their property is publicly available from such a broad range of sources. I am sure that [the affected person] is unfamiliar with the various sources which will provide the sale details on her property at a very nominal charge, however, she has no potential to suffer any loss from this information being available.

Previous orders of this office have drawn a distinction between information which is "about" a property, which does not qualify as "personal information" under section 2(1) of the *Act*, and information which is "about" an individual, which does meet the definition. In Reconsideration Order R-980015, Adjudicator Donald Hale stated:

> "Personal information" means recorded information about an "identifiable individual". The Commissioner has interpreted this term to mean a natural person; it does not apply to information about other entities such as corporations, partnerships, sole proprietorships or business organizations (Order 16). The Commissioner has also recognized that some information relating to a business entity may, in certain circumstances, be so closely related to the personal affairs of an identifiable individual as to constitute that individual's personal information

> (Orders 113, P-364, M-138). Nonetheless, in order to qualify as "personal information", the fundamental requirement is that the information must be "about an identifiable individual" and not simply associated with an individual by name or other identifier. It is apparent, therefore, that while the meaning of "personal information" may be broad, it is not without limits.
>
> The words "about an identifiable individual" was first discussed in Order [23] by former Commissioner Sidney B. Linden. *That case raised the question of whether a Ministry of Revenue record containing the municipal locations of certain properties and their estimated market values would constitute the property owners' personal information when associated with the names of the property owners. Former Commissioner Linden found that it did not. The location of a property and its estimated market value was found to be information about the property, not information about an identifiable individual. If the name of an individual property owner were added to this information, it could not be said that the individual's name "appear[ed] with other personal information relating to the individual" or "would reveal other personal information about the individual" within the meaning of paragraph (h) of the personal information definition in section 2(1) of the Act*. [emphasis added]

More recently, in Order PO-1786-I, involving a request for information including the names of purchasers of property and the amounts paid, Assistant Commissioner Tom Mitchinson stated:

> 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).

In another recent order, Adjudicator Katherine Laird found that appraisal figures, as well as the actual purchase price, respecting a property owned by an identifiable individual constitute "personal information" [see Order PO-1847].

In the circumstances, following Orders PO-1786-I and PO-1847, I find that the appraisal figures as well as the purchase price figures in Records 1, 2 and 3 qualify as the affected person's personal information under the definition in section 2(1) of the *Act*. This finding also applies to information which would substantially reveal such figures. However, the remaining information withheld from the records does not qualify as personal information, since it is about the property, and cannot be said to be about the affected person.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Section 14(1) of the *Act* prohibits an institution from disclosing personal information, unless one of the exceptions in paragraphs (a) through (f) applies. In the circumstances of this case, the only exception which could apply is section 14(1)(f), which permits disclosure of personal information where the disclosure would not constitute an unjustified invasion of personal privacy.

Sections 14(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 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(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 once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Divisional Court has stated that the only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the *Act* or where a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.

The TRCA argues that the presumption at section 14(3)(f) applies. That section 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;

In Order PO-1847, Adjudicator Laird stated:

> 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) [the provincial equivalent to section 14(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.

In the circumstances, and consistent with Order PO-1847, I find that the appraisal and purchase price figures, as well as the other information which would substantially reveal this information, fall within the section 14(3)(f) presumption of an unjustified invasion of the affected person's personal privacy. Therefore, this information is exempt under section 14 of the *Act*. However, the information I found not to qualify as personal information is not exempt under section 14 and therefore must be disclosed.

ORDER:

1. I uphold the decision of the TRCA to withhold the personal information in the records pursuant to section 14 of the *Act*.

2. I order the TRCA to disclose Records 1 and 2 to the appellant, with the exception of the information highlighted on the copy of those records included with the copy of this order sent to the TRCA, no later than **February 28, 2001**, but no earlier than **February 23, 2001**.

3. In order to verify compliance with provision 2, I reserve the right to require the TRCA to provide me with a copy of the material disclosed to the appellant.

Original Signed By: January 26, 2001
David Goodis
Senior Adjudicator