



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1948

Appeal PA-000418-2

Ministry of the Environment



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NATURE OF THE APPEAL:

The Ministry of the Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to an investigation undertaken into the disposal of waste at a dump site located in the Regional Municipality of Haldimand-Norfolk (the Region). Specifically, the requester sought access to the witness statements prepared by Ministry inspectors, along with any reports or memoranda prepared during the course of the investigation and any correspondence from the Region relating to the investigation.

The Ministry located a number of records which were responsive to the request and granted access to some of them, in whole or in part. Access to other records was denied, in their entirety, on the basis that they were exempt from disclosure under the following exemptions contained in the *Act*:

- section 21(1) - invasion of privacy - in conjunction with the presumption in section 21(3)(b) - law enforcement investigation records; and
- section 19 - solicitor-client privilege

The requester, now the appellant, appealed the Ministry's decision to deny access to the severed portions of the records, as well as those records to which access was denied in their entirety. In addition, the appellant submits that additional records responsive to his request should exist. He is of the view that the investigator's notes should include entries for the period March 8, 2000 to July 13, 2000 and that a record dated April 20, 2000 is illegible and has been severed.

The appellant also advised that he was not seeking access to the record for which the Ministry had claimed the solicitor-client privilege exemption. In addition, the appellant indicated that he was not appealing the Ministry's decision to deny him access to certain daily log sheets belonging to a disposal firm or to a waste management by-law referred to in his original request.

As further mediation was not possible, the appeal was moved to the Adjudication stage. I decided to seek the representations of the Ministry, initially. The Ministry advised that it did not intend to make any submissions in this appeal. I then provided a Notice to the appellant and to two individuals whose rights may be affected by the disclosure of the information contained in the records (the affected persons). I received submissions from one of the affected persons only.

RECORDS:

The records remaining at issue in this appeal consist of:

- Record 1. Witness statement dated June 20, 2000, in its entirety.
- Record 2. Witness statement dated July 31, 2000, in its entirety.
- Record 3. The undisclosed portions of the Investigator's notes dated May 1, 2000 to September 21, 2000.

- Record 4. The undisclosed portions of two copies of an Initial Occurrence Report dated April 11, 2000.
- Record 5. The undisclosed portions of a Supplementary Report dated September 21, 2000.
- Record 6. The undisclosed portions of a facsimile cover sheet dated May 5, 2000 and correspondence dated April 7, 2000, August 2, 2000 and April 26, 2000.

DISCUSSION:

PERSONAL INFORMATION

Section 2(1) of the *Act* defines the term “personal information” to mean recorded information about an identifiable individual, including information relating to the age of the individual (section 2(1)(a)), employment history of the individual (section 2(1)(b)), the address and telephone number of the individual (section 2(1)(d)), the personal opinions or views of the individual (section 2(1)(e)), the views or opinions of another individual about the individual (section 2(1)(g)) and the individual’s name where it appears with other personal information relating to that individual (section 2(1)(h)).

I have reviewed each of the records remaining at issue and make the following findings:

- Record 1 contains the personal information of one of the affected parties. This includes information relating to age and the employment history of this individual (sections 2(1)(a) and (b)), his address and telephone number (section 2(1)(d)), his views and opinions (section 2(1)(g)) and this individual’s name along with other personal information relating to this particular affected person (section 2(1)(h));
- Portions of Records 2, 3 and 5 also contain the personal information of the affected person, including the views and opinions of another individual about the affected person (section 2(1)(g)) and other personal information relating to this individual, along with his name (section 2(1)(h));
- The remaining records and parts of records at issue do not contain “personal information” as that term is defined in section 2(1) of the *Act*. The individuals who are referred to in these records appear only in their capacities as officials with the Ministry, the Region or the City of Brantford. The records relate solely to matters arising during the course of their employment and do not reflect their personal interests or lives in any way; nor do the records reflect any criticism of the manner in which these individuals performed their jobs. As a result, it cannot be said that these records contain the personal information of any of these individuals. [Orders PO-1739-R and PO-1725 and Reconsideration Order R-980015]

INVASION OF PRIVACY

The section 21(1) personal privacy exemption only applies to information which qualifies as “personal information” as that term is defined in section 2(1). Accordingly, I need only evaluate whether the exemption applies to Record 1 and to those portions of Records 2, 3 and 5 which I have found above contain the personal information of one of the affected persons.

Where an appellant seeks the personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In its decision letter, the Ministry claimed that disclosing the records would constitute an unjustified invasion of the personal privacy of the affected persons who are identified in the records, pursuant to section 21(1)(f). This section reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. 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; and 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 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 appellant has not provided me with any representations nor has any other evidence been tendered supporting a finding that the disclosure of this personal information would not constitute an unjustified invasion of personal privacy under section 21(1). In the absence of such submissions, I am unable to make a finding that the section 21(1)(f) exception applies. Accordingly, I find that the personal information contained in Records 1, 2, 3 and 5 is properly exempt from disclosure under section 21(1). I have provided the Ministry’s Freedom of Information and Privacy Protection Coordinator with a highlighted copy of these records indicating what information should **not** be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose those portions of Records 1, 2, 3 and 5 which are **not** highlighted on the copy which I have provided to the Ministry’s Freedom of Information and

Privacy Protection Coordinator to the appellant by providing him with a copy by October 25, 2001 but not before October 19, 2001.

2. I uphold the Ministry's decision to deny access to the highlighted portions of the records.

In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original Signed By: _____
Donald Hale
Adjudicator

September 19, 2001 _____