



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2021

Appeal PA-020004-1

Ministry of Transportation



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Transportation (the Ministry), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requesters, now the appellant, sought access to the following documents:

- i) “true copies of all MTO written communications with the commercial property owner, [named company][named individual] operating as the [named business], Pt. Lt.[number] Con. [number] town of Georgina;
- ii) true copies of all communications, written and/or written précis of oral communication received from [named company] citing name of spokesperson;
- iii) true copies of the written communications by any third parties who are advancing (an) interest(s) in matters as to the land use permit;
- iv) true copies of any written communication from legal counsel not procured for the purposes of litigation; and
- v) any other materials unknown to the applicants at this time but relating to Land Use Permit No. [number] matter.”

In its decision, the Ministry provided access to a number of records, but withheld six records in their entirety, relying on the mandatory exemption in section 21(1) of the *Act* (unjustified invasion of personal privacy).

During mediation, it was confirmed that section 49(b) of the *Act* may also be an issue, as some of the records may contain the personal information of the appellants.

I sent a Notice of Inquiry to the Ministry and to an affected party, initially, inviting their representations on the facts and issues in dispute. I received representations from the Ministry only, which were shared with the appellants. The appellants were also invited to submit representations, but have not sent any.

RECORDS:

There are six records at issue, numbered B1 to B6 in the Ministry’s Index of Records. Record B1 is a notice dated August 28, 2001, addressed to the appellants and others, and signed by a named individual. Record B2 is an undated notice to a named individual, signed by a named individual. Record B3 appears to be a computer printout of a Ministry Building and Land Use Permit, and is dated August 24, 2001. The second page of Record B3 is a schedule of conditions. Record B4 is a letter from the Ministry to a named individual, dated August 27, 2001. Record B5 is a memo from one Ministry employee to another Ministry employee, dated August 27, 2001. Record B6 is substantially the same as Record B3, in certificate form, and with some handwritten notations.

DISCUSSION:

PRELIMINARY ISSUE:

In its representations, the Ministry raises an issue about whether Record B1 is in its “custody or control” because the record was given to the Ministry unsolicited for its information, and not to fulfil any legal requirements.

There is a real question about whether the Ministry is entitled to even raise this issue at this stage of the proceedings. However, even if I accept that this issue may be raised, I find that Record B1 is a record “in the custody or under the control of an institution” within the meaning of section 10(1) of the *Act*.

The Ministry does not dispute that Record B1 is in its possession, or that it was sent to it. It does not suggest that the record has ever been stored separately from its other files, or that it was ever located anywhere but in its files. Although it states that the record was sent to it unsolicited, it does not suggest that it does not now have responsibility for it. Given all of this, I am satisfied that this is not one of those “rare cases” referred to in Order P-267 where physical possession falls short of establishing custody. I find, therefore, that Record B1 is in the “custody or control” of the Ministry, and is subject to section 10(1) of the *Act*.

PERSONAL INFORMATION

In order to assess whether sections 21(1) and/or 49(b) apply, it is necessary to determine whether the records contain personal information, and to whom that personal information relates.

Under section 2(1) of the *Act*, “personal information” is defined as recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be “about the individual” within the meaning of section 2(1) definition of “personal information” [Orders P-257, P-427, P-1412, P-1621].

The Ministry submits that the records contain the personal information of the affected party, as well as of the appellants. Records B1 and B2 contain personal information about the affected party, such as the fact that he is the owner of a piece of private property, and his home address. Records B3 to B6 also contain the home address of the affected party, as well as an identifying number assigned by the Ministry to the individual and other personal information.

On my review of the records, I find that Records B1 and B2 contain personal information of the appellants. There is also information about an additional individual, in Record B2. On my

review of the material before me, it is apparent that this additional individual is an employee of the Ministry. Accordingly, I find that the information about this additional individual is not his personal information.

Records B1 and B2 contain information about the affected party, certain statements made by the affected party, in his capacity as an owner of a business. Prior orders have considered the issue of whether information about a small business is the personal information of the business owner for the purposes of the *Act*. Beginning with Order 16, a decision of former Commissioner Sidney B. Linden, it has generally been found that information relating to a sole proprietorship, partnership, unincorporated association or corporation does not qualify as “personal information” because the “protection provided with respect to the privacy of personal information relates only to natural persons”. In Order 113, however, he clarified this finding, stating:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

Where, therefore, the information reveals financial aspects of a small business, and there can be said to be little if any distinction between the financial circumstances of the business and the individuals, such information has been found to qualify as the personal information of the individuals (see Order P-464, discussed in Order PO-1986).

In Order M-454, the information at issue consisted of the name, address and telephone number of a kennel, the name of one of the operators of the kennel, and information about an incident which occurred in the course of conducting the business of the kennel. Former Inquiry Officer John Higgins found this information not to constitute the personal information of any individual, even though the business address of the kennel was the same as the home address of the business owner.

I agree with the reasoning in Order M-454, which contains similar facts to those before me. I am satisfied that to the extent that Records B1 and B2 contain the address of the business, which may be the same as the home address of one of the business owners, this is not personal information within the meaning of section 2(1) of the *Act*. Further, the statements made by the affected party in these records were made in his capacity as an owner of the business, and were therefore about the business, rather than about him.

Records B3 to B6 also contain information about the affected party. In contrast to the information in Records B1 and B2, Records B3 to B6 contain information about the affected party as a *property owner*, rather than about the affected party as a *business owner*. Records B3 to B6 relate to a land use permit. In Order M-331, Adjudicator Laurel Cropley analyzed a similar situation, and concluded:

I have examined the records, which consist of the building permit application form, the actual building permits, a zoning check sheet, information sheets,

receipts and technical drawings and plans. The building permit application form requires the name, address and telephone number of the owner and applicant. In my view, where the owner or applicant is an individual, as in this case, the name, address and telephone number qualify as personal information as defined in sections 2(1)(d) and (h) of the *Act* (Order M-138).

I am of the view that the name, telephone number and address of the owner or applicant which appear on the records at issue in this appeal qualify as the personal information of these individuals.

The remaining information contained in the records relates to renovations made to the specific residential property and does not, in my view, qualify as personal information (Order 23).

I agree with this analysis, and applying it to the case before me, I am satisfied that the name and address of the affected party in Records B3 to B6 constitute his personal information. In addition, Record B6 contains other personal information about the affected party and about another individual, in the handwritten portions. The remaining information in Records B3 to B6, including the permit number, does not qualify as personal information, in that it relates to the property and not to an individual.

INVASION OF PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

Section 49(b) of the *Act* provides:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Under section 49(b), where a record contains the personal information of both a requester and of other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information. The institution may also decide to grant access despite this invasion of privacy.

Because I have found that Records B1 and B2 contain the personal information of the appellants, and of no other identifiable individuals, section 49(b) does not apply. Under section 47(1), the appellants have a right of access to this record.

Record B2 does not contain the personal information of any individuals. Accordingly, section 21(1) does not apply, since that exemption only applies to records containing personal information. The appellants have a right of access to this record under the provisions of section 10(1) of the *Act*, governing access to general records.

It remains to consider the name and address of the affected party in Records B3 to B6, and the personal information of the affected party and another individual in the handwritten portions of Record B6.

As these records do not contain the personal information of the appellants, section 49(b) is not applicable, and only section 21(1). Where 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. Under section 21(1)(f), disclosure is prohibited unless that disclosure would not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the head 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.

The Ministry submits that the disclosure of the personal information in these records would constitute an unjustified invasion of personal privacy. The Ministry submits that none of the criteria identified in section 21(2) of the *Act* favour the disclosure of the information to the appellants. Further, with respect to the handwritten notations in Record B6, the criterion in section 21(2)(f) (highly sensitive information) weighs against disclosure.

Although, on my review, none of the factors identified in section 21(2) appear to weigh either in favour or against a finding of an unjustified invasion of privacy, it is apparent that the appellants already know the name and address of the affected party (albeit by lot description rather than street address). Their request specifically sets out that they wish access to information about the affected party's property and the land use permit in relation that property. I find that this is an unlisted factor which weighs against a finding that disclosure of this information to the appellants would constitute an unjustified invasion of the personal privacy of the affected party. I conclude, therefore, that section 21(1) does not apply to exempt the disclosure of the affected party's name and address, as contained in Records B3 to B6.

Turning to the handwritten portions of B6, although I am inclined to conclude that there is insufficient evidence to establish that section 21(2)(f) applies in the circumstances of this case, there is also little evidence that would suggest that the disclosure of that information would *not* constitute an unjustified invasion of personal privacy. As I have indicated, the appellants have made no representations in this appeal.

I therefore conclude that it has not been established that the disclosure of the personal information contained in the handwritten notes in Record B6 would not constitute an unjustified

invasion of personal privacy. I conclude that the application of the exemption in section 21(1) has been established for this portion of Record B6. Since, however, this portion can be easily severed, the rest of the record may be disclosed.

ORDER:

1. I order the disclosure of Records B1 to B6, with the exception of the portion of Record B6 which I have found exempt under section 21(1). For greater certainty, I enclose with the Ministry's copy of my order a copy of Record B6, highlighting the portion to be withheld.
2. I order disclosure to be made by sending the appellants a copy of the information ordered to be disclosed by no later than July 5, 2002 but not before June 28, 2002.
3. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Ministry to provide me with a copy of the material which it discloses to the appellants.

Original Signed By: _____
Sherry Liang
Adjudicator

_____ June 6, 2002