



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1501

Appeal MA-980234-3

Township of King



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NATURE OF THE APPEAL:

This is an appeal from a decision of the Township of King (the Township), made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to:

copies of the 41 survey forms from the King City Septic Survey conducted by (two named consultants) in 1994. These 41 forms were identified as responding to question D18(b) of the funding application submitted to the Ministry of Environment, October 27, 1997.

I understand that due to the confidentiality of the Survey, personal information, that is the names, telephone numbers, signatures of the individuals and the street numbers will not be shown.

In its decision, the Township indicated that it had obtained the records from one of the consultants. It also noted that the appellant has already obtained access to these surveys from another institution, as part of a larger group of surveys, with street numbers and names severed.

The Township denied access to the records, relying on the mandatory exemptions in sections 10(1)(b) and (c) of the *Act* (third party information), the mandatory exemption in section 14(1) (unjustified invasion of personal privacy), and the discretionary exemption in section 15 (available to the public).

The appellant appealed the decision of the Township. During mediation through this office, the issues were narrowed to the exemption in section 10(1)(b) of the *Act*. In this appeal, the appellant also challenges the responsiveness of the records, in that although she requested 41 specific survey forms, 52 have been identified.

It should be noted that some of the background of this request is described in Order MO-1251.

I sent a Notice of Inquiry to the Township initially, asking for its representations on the issues and facts raised by the appeal. These representations were sent to the appellant, with the exception of a portion withheld for confidentiality reasons, and the appellant has provided representations in response.

RECORDS:

The records at issue consist of 52 survey forms, completed in handwriting. The information on the surveys includes the date on which it was completed, the street name of the residence or business surveyed, length of occupancy, particulars about the property, and details about the state and working order of the septic system on the property. Any names, signatures, telephone numbers and street numbers have been severed from the records.

DISCUSSION:

RESPONSIVENESS OF RECORDS

Previous orders of the Commissioner have established that in order to be responsive, a record must be "reasonably related" to the request. Former Adjudicator Anita Fineberg canvassed the issue of responsiveness of records in detail in Order P-880. In applying the direction provided by the Divisional Court in *Ontario (Attorney-General) v. Fineberg* (1994), 19 O.R. (3rd) 197, she concluded:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to a request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as being responsive to the request. I am of the view that, in the context of freedom of information legislation, "relevancy" must mean "responsiveness". That is, by asking whether information is "relevant" to a request, one is really asking whether it is "responsive" to a request. While it is admittedly difficult to provide a precise definition of "relevancy" or "responsiveness", I believe that the term describes anything that is reasonably related to the request.

In the case before me, the request has its genesis in a Provincial Water Protection Fund Application submitted by the Township to the Ministry of the Environment (MOE) in either late 1997 or early 1998. Question D18 of that survey deals with septic tank dwellings. Question D18(b) consists of a table setting out details of septic tank problems in the area. In this table, the Township has identified that there are 41 dwellings with septic tank sewage problems.

As set out above, the appellant has requested access to the "41 forms ... identified as responding to question D18(b) of the funding application".

In responding to this request, the Township in turn wrote to the consultant which collected the information for the purposes of the funding application, asking for the records and quoting the appellant's request. This consultant sent the Township the 52 surveys which now constitute the records at issue in this appeal. In its letter, a copy of which was sent to the appellant by the Township, the consultant states,

[we] are enclosing copies of the Septic Tank survey forms, which, as closely as possible, represent the basis for the statistical information presented in the 1994 Environmental Study Report for the King City Sanitary Sewage System Review. You will find we have enclosed more than 41 forms, the number identified in the statistical data in the report. Other factors, including the verbal information provided by the sampled residents, would have been used at the time, in a process to pare the sample to the number ultimately used in the report. The forms enclosed, represent, as best as possible, those forms that were included in this process.

The appellant's position is that the Township has not responded properly to her request in that it has failed to identify which 41 of the 52 surveys are responsive to it. The appellant submits that it ought to be possible to provide the 41 specific surveys requested. By identifying 52 records, the Township has made it impossible for her to determine which of those surveys were relied upon by the consultant for the purposes of the funding application and in effect defeats the purpose of her request.

The Township submits that the records provided are reasonably related to the request, as discussed in Order P-880. The purpose of the survey was to identify serious septic problems with the study area. The 52 survey forms all report serious septic problems and for that reason are relevant to the request. The Township did not have the responsive records, and relied on the consultant to provide the material to it. The consultant's letter indicates that other factors besides the survey forms themselves were used in the process to arrive at the number of 41 dwellings in question D18(b). The Township relies on the information provided in that letter.

I find that the records located by the Township are responsive to the appellant's request, in that they are reasonably related to her request. The appellant has asked for the surveys which formed the basis of one of the answers in question D18(b). The Township has made inquiries of the party who supplied the information for question D18(b). Based on the information it obtained, it has identified 52 surveys as constituting the basis for that answer. The appellant wishes the response to be restricted to 41 surveys, but the Township cannot respond to her request in that manner. It is apparent from the information provided by the consultant that there is no defined set of 41 surveys which corresponds directly to the answer "41" to question D18(b). Rather, there is a set of 52 surveys which was used in arriving at that answer. Given this, it was reasonable for the Township to treat the request as covering the surveys which were the basis of the answer "41".

In a sense, the appellant wishes to have information or clarification as to how the responses in the 52 surveys came to be reported as 41 dwellings with septic tank sewage problems in question D18(b). This, however, is going beyond the scope of the *Act*, in that she seeks information which is not found in a record (see Order 17).

In sum, I find that the 52 records at issue are responsive to the request.

THIRD PARTY INFORMATION

Section 10(1) of the *Act* provides:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Section 10(1) exists in recognition of the fact that in the course of carrying out public responsibilities, governmental agencies often find themselves in possession of information about the activities of private entities. In Order PO-1805 Senior Adjudicator David Goodis, discussing the purposes of the provincial equivalent to section 10(1), stated that this provision was designed to "protect the 'informational assets' of businesses or other organizations which provide information to government institutions".

Although, as stated in other orders, one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of information which, while in the possession of government, constitutes confidential information of a third party which could be exploited by a competitor in the marketplace.

In applying section 10(1), previous orders have held that in order to support an exemption from disclosure under this section, institutions or affected parties must establish each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of subsection 10(1) will occur.

[Orders 36, P-373, M-29 and M-37]

As I have indicated, the information at issue includes the date on which the survey was completed, the street name of the residence or business surveyed, length of occupancy, particulars about the property, and details about the state and working order of the septic system on the property. As an example, one survey notes in the category of soil saturation problems, past and potential problems with “soft spots @ bed”; in the category of bed failure, past problems with “pipes blocked”; and the current presence of odours.

In the Notice of Inquiry, I noted that on my preliminary review of the matter, it appears unlikely that the information in question constitutes a trade secret or scientific, financial or labour relations information, but invited submissions from the parties if they disagreed with this. I also asked for representations on whether the information could be considered either technical or commercial in nature.

The Township submits that the records reveal technical information concerning septic systems which the engineering consultants used to develop a representative sampling of the operational problems experienced with septic tank systems in the community of King City. The information was collected by and for the consultants in order to prepare the report which provided professional opinions as to sewage servicing conditions in the community and recommendations for developing a strategy for overall sanitary services in the community. The information was collected through a random door-to-door survey. The consultant analyzed the results and created the summary information.

The appellant submits that the information in dispute does not constitute any of the types of information listed in section 10(1). The information on the survey forms is anecdotal in nature and was provided by members of the public, not by a professional in the field.

I find that the information in issue does not constitute any of the types of information listed in section 10(1). None of it falls into the categories of “a trade secret or scientific...commercial, financial or labour relations information”. As for technical information, in Order P-454, former Assistant Commissioner Irwin Glasberg stated:

Technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 10(1)(a) of the *Act*.

I agree with the appellant that the information on the surveys does not constitute technical information, as it is information of an anecdotal nature provided by homeowners and property owners about their experiences with their septic systems.

Since it is necessary for all parts of the three-part test under section 10(1) to be satisfied, I find that the records do not qualify for exemption under this section.

Before concluding this section, I acknowledge the representations of the Township with respect to the assurances of confidentiality which were given to the residents who participated in the survey. I accept that such assurances were given, in order to encourage participation and candour in answering the questions in the survey. Further, I accept that the Township intended throughout to honour this commitment to the residents. Notwithstanding this, however, the Township is an institution which is subject to the *Act*, and to the extent that the Township's expectations or intentions conflict with its provisions, the *Act* must prevail. Since I have found that the information in the records is not the type of information described in section 10(1), that section cannot be a basis for refusing disclosure to the records.

PERSONAL INFORMATION/INVASION OF PRIVACY

Although the application of section 14(1) was not identified as an issue in this appeal in my Notice of Inquiry, some of the representations of the Township touch on issues relating to section 14(1), and I find it appropriate to discuss them here.

The Township has acknowledged that the appellant is already in possession of all 269 surveys in the study, including the 52 at issue in this appeal, and with the exception of the severed information. The Township indicates that it disagrees with the decision by the Regional Municipality of York to provide the appellant with the complete set of surveys.

In its submissions, the Township states that it is concerned that even with the severances, there is information on some of the surveys that may enable the identification of the individuals who provided the information, or whose properties have septic tank problems. It also expresses concern that providing the 52 records separately from the entire survey could lead to the identification of individual residents. The Township also refers to some forms on which individuals identify septic problems on neighbouring properties, the disclosure of which would be embarrassing to these individuals.

In reviewing the records, I find that there is a possibility that, with determined effort and expertise, an individual in possession of the information in them may be able to link the information with some specific street addresses, despite the severances. This does not apply to all of the surveys, but may well apply to some. However, even the possibility of the identification of street addresses does not necessarily lead to the identification of identifiable individuals, since most of the residences have several or more occupants. Perhaps more importantly, it is arguable in any event that the information in the surveys does not constitute "personal information" within the meaning of the *Act*, since it describes details about the property and not about any specific individual.

I also find that the identification of the 52 surveys which are the basis of the answer to question D18(b) on the application for funding does not by itself create a greater likelihood of the disclosure of personal information. Since the appellant already possesses copies of all of the

surveys (with severances), the only piece of information which disclosure of the 52 surveys adds is that they are the basis for that answer. I do not find the disclosure of this piece of information to raise issues under section 14(1).

I am satisfied, therefore, after considering the representations of the Township, that the disclosure of the 52 survey forms with personal information severed does not raise issues of personal privacy.

I will accordingly order the records disclosed, in their severed form.

ORDER:

1. I order the Township to disclose to the appellant the 52 survey forms at issue in the appeal, as severed.
2. I order disclosure to be made by sending the appellant a copy of the records by no later than February 22, 2002.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 1 and 2.

Original signed by: _____
Sherry Liang
Adjudicator

January 23, 2002 _____