ORDER PO-2048

Appeal PA-010281-1

Ministry of Natural Resources

NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of Natural Resources (the Ministry), made under the *Freedom of Information and Protection of Privacy Act (the Act)*. The requester (now the appellant) had sought access to the following records and information, all relating to an application under the *Lakes and Rivers Improvement Act* (the *LRIA*) by his neighbours to divert a stream on their property:

> Question #1: What provision in the *Lakes and Rivers Improvement Act* (LRIA) permits by-laws allowing for an 8 meter set back?
>
> Question #2: Who was at the meeting when the project was approved? Where was the meeting held and on what date? What provision in the LRIA allows such a meeting?
>
> Question #3: Why is my signature not required to move a stream?
>
> Question #4: What situation and what "special circumstances" allowed the application to proceed without my signature?
>
> Question #5: Why was the third set of drawings approved with the building envelope within the 8 metre setback?

The records sought by the appellant were:

> Item #1: Final inspection report as in section 20 of LRIA and page 3 of Schedule F Conditions of Approval MH-0S-30, paragraph 7.
>
> Item #2: Final inspection data related to the project as per Guidelines and Information on page 3, paragraph 7 of work permit and final inspection under LRIA section 20.
>
> Item #3: Certification by engineer/consultant that the work was complete in accordance with approved plans, or was modified and provide set of as-constructed drawings.
>
> Item #4: All required design data including Hydrologic and Hydraulic characteristics of the natural and deviated stream.

In its initial response to the request, the Ministry informed the appellant that although it would treat part of his letter as a request for access to records under the *Act*, some of his questions fall outside the scope of the *Act*. The Ministry indicated that it would be referring the appellant's questions to program staff in the Southcentral Region.

The Ministry located a number of records in response to the request. It also decided to give notice of the request to certain affected parties (the neighbours and their consultants). In its decision, the Ministry granted access to some of the records, granted partial access to other records, and withheld some records in their entirety. The Ministry relied on the mandatory exemption in section 21 of the *Act* (unjustified invasion of personal privacy) as well as the mandatory exemption under section 17 (third party information), in refusing access to some of the records or parts of records.

The Ministry further advised the appellant that a final inspection has not yet been undertaken of the project; hence, a final inspection report does not exist.

I sent a Notice of Inquiry to the Ministry, to the neighbours (also referred to as the proponents) and to an engineer for the neighbours, initially, inviting them to make representations on the facts and issues in dispute. The Ministry's representations, including an affidavit, were shared with the appellant, who was also invited to and has made representations in response. Two of the affected parties also submitted representations, but I found it unnecessary to share those with the appellant.

Since, on my review of the records, it appeared that sections 49(a) and/or (b) may be applicable with respect to one of the records, specifically page 00067, I also asked for representations on these sections of the *Act*.

It should be noted that a prior, similar request by the appellant has been the subject of an order from this office, Order PO-1825. I will be referring to that order during the course of my decision as parts of it are applicable here.

RECORDS:

There are 67 pages of records at issue. They consist of email messages, handwritten notations, photographs, correspondence to and from the Ministry, drawings and technical information about the stream diversion project.

During the course of this inquiry, the Ministry withdrew its reliance on section 17 with respect to some of the records. However, the affected parties who submitted representations continue to object to the release of those records.

The following are the exemption claims relied on by the Ministry or by the affected parties:

Section 17: Pages 00020 to 00034, 00038 to 00067, 00069 to 00072

Section 21: Portions of pages 00001 to 00015, 00017, 00035, 00051, 00055, 00056, 00067 and 00072

DISCUSSION:

REASONABLE SEARCH/FORM OF REQUEST

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Ministry will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/she is seeking and an institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records which are responsive to the request. The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the Ministry's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

In this case, the appellant believes that more records exist. Specifically, although he accepts that there is no final inspection report, he believes that there must be final inspection data relating to the project (see item #2 above) and certification by an engineer that the work has been completed (item #3 above).

The Ministry has submitted an affidavit from a Senior Project Engineer (the Engineer) for the Region of the Ministry responsible for the application under the *LRIA*. With respect to the appellant's contention that certification of completion of the work must exist, the Engineer states that the work permit requires the design engineer to monitor construction and certify that the approved works were constructed in accordance with the permit. The Ministry states that to date, it has not received the designer's certification. With respect to data relating to a final inspection, it is submitted that the *LRIA* provides authority for inspectors and engineers appointed by the Minister to enter onto private lands, and such action is discretionary. To date, it is stated, no inspectors have been appointed and no final inspection of the project undertaken.

The Engineer provides details of the search, its location, scope and result.

Based on the information provided by the Ministry, I am satisfied that its search for records responsive to the request was reasonable. Further, I accept its submission as to the lack of a certification and final inspection data in its records. It may well be that the appellant is simply not satisfied with the Ministry's actions in relation to this project. My role in this inquiry is not to judge whether or not the Ministry ought to have or ought to be taking action to acquire the data which the appellant seeks. It is only the Ministry's search for records which is at issue before me, not its other dealings with this project.

The appellant has also stated that he is not satisfied with the responses given by the Ministry to his questions which, for ease of reference, I reproduce here as well:

> Question #1: What provision in the *Lakes and Rivers Improvement Act* (LRIA) permits by-laws allowing for an 8 meter set back?
>
> Question #2: Who was at the meeting when the project was approved? Where was the meeting held and on what date? What provision in the LRIA allows such a meeting?
>
> Question #3: Why is my signature not required to move a stream?
>
> Question #4: What situation and what "special circumstances" allowed the application to proceed without my signature?
>
> Question #5: Why was the third set of drawings approved with the building envelope within the 8 metre setback?

The Ministry acknowledges in its representations that it has an obligation under the *Act* to interpret such questions in such a manner that they can be seen as a request for records, and search for records which contain answers to the questions posed (see, for instance, Order M-493). In this case, the Ministry submits, questions 1, part of 2, 3 and 4 relate to the interpretation of the *LRIA* and its application to the project and adjoining properties. There are no records which would provide the "raw materials" for the answers to the questions. It referred the questions to its program staff in order to respond to the appellant.

Further, the Ministry submits, in relation to question 2, there are no records relating to a meeting about the approval of the project, as no meeting took place. With respect to question 5, there are no records relating to the reason why a third set of drawings was submitted. The Ministry states that it is not unusual for applicants to provide drawings and information unrelated to their application, to the Ministry. The same material would be submitted to other agencies to obtain their approval for the project. This avoids the cost and delay of preparing specific drawings and information for each required approval. The Ministry's approval clearly indicates that it is limited to the watercourse channelization.

In its representations, the Ministry also provides some further explanation to the appellant about the processes under the *LRIA*.

The appellant has made extensive submissions. Much of the submissions detail his disagreements with the Ministry's handling of this project, and his understanding of its obligations under the *LRIA*. His submissions also provide his comments on some of the explanations in the Ministry's representations.

I am satisfied that the Ministry fulfilled its obligations under the *Act* in the manner in which it dealt with the appellant's questions. I accept that it considered whether the information sought was contained in records, and reasonably concluded that it did not. The material before me establishes that there has been ongoing and extensive communication between the appellant and the Ministry over the past several years in relation to his efforts to receive satisfactory answers to his questions, and the Ministry's efforts to provide them. It is clear that the appellant is not satisfied with the Ministry's response. It is apparent that the appellant's dissatisfaction is related more to his objections to the project and the Ministry's approval of the project, rather than to issues raised under this *Act*. The appellant may be under the misapprehension that the processes under this *Act* allow me to review the propriety of the Ministry's actions in relation to this project. They do not. This *Act* is about access to information, and not about the Ministry's obligations under the *LRIA*. As I have stated, in relation to this *Act*, I am satisfied that the Ministry has fulfilled its obligations.

THIRD PARTY INFORMATION

Section 17(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, where 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 17(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 businesses. It has been described as designed to "protect the 'informational assets' of businesses or other organizations which provide information to government institutions" (see Order PO-1805).

Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of information which, while in the possession of government, constitutes confidential information of third parties which could be exploited by a competitor in the marketplace.

In applying section 17(1), prior orders have sought to strike a balance between the public policy in favour of public scrutiny of government activities, and third party economic interests. Prior 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]

Part One: Type of Information

The Ministry submits that the records contain technical information. Technical information has been defined in previous orders of this office in the following manner:

> [I]nformation 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 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 [Order P-454].

On my review of the records before me, I am satisfied that the records at pages 00020 to 00034, 00038 to 00055, 00057 to 00066 and 00069 to 00070 contain technical information in that they refer to or contain plans and drawings prepared by an engineer for the proponents in relation to the stream diversion project. Although some of the records were not prepared by the engineer directly, they nevertheless reveal information prepared by the engineer.

In Order PO-1825, Adjudicator Laurel Cropley found that information which "refers in a general way to technical matters" is not "technical information", where it does not itself contain details of a technical nature. The same is applicable to the records in this appeal at pages 00056, 00067, 00071 and 00072. Page 00056 contains general comments of a Ministry engineer about a report provided by the proponents' engineer, without specific details about the technical aspects of that

report. Page 00067 is an internal Ministry memo which does not relate to technical subjects. Page 00071 confirms certain requirements placed by the Ministry on the project, described in a general manner. Finally, page 00072 contains internal Ministry memos discussing the project generally and the Ministry's requirements. None of these pages contains detailed information about the technical aspects of the project.

The information in pages 00056, 00067, 00071 and 00072 thus does not qualify as "technical information". It also does not appear to fall into any of the other types of information referred to in section 17(1). As the information in these pages does not satisfy the first part of the test under section 17(1), they accordingly do not qualify for exemption under this section.

Part Two - Supplied in Confidence

In order to satisfy the second requirement, the Ministry and/or the affected parties must show that the information was supplied to the Ministry, either implicitly or explicitly in confidence. In addition, information contained in a record will be said to have been "supplied" to an institution, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry (Orders P-179, P-203 and PO-1802).

The Ministry states that it relies on the representations of the affected parties with respect to these elements of the section 17(1) exemption claim.

Supplied

I am satisfied that the records at pages 00020 to 00034, 00038 to 00055, 00057 to 00066 and 00069 to 00070 contain information supplied by the proponents of the project or an agent, or would permit the accurate drawing of inferences revealing such information. The correspondence at these pages came either directly from the proponents or their agent, or discusses information provided by them.

In confidence

In order to establish that the records were supplied either explicitly or implicitly in confidence, the Ministry and/or the affected parties must demonstrate that an expectation of confidentiality existed at the time the records were submitted, and that this expectation was reasonable and had an objective basis (Order M-169). All factors are considered in determining whether an expectation of confidentiality is reasonable including whether the information was:

1. Communicated to the Ministry on the basis that it was confidential and that it was to be kept confidential.

2. Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the Ministry.

3. Not otherwise disclosed or available from sources to which the public has access.

4. Prepared for a purpose which would not entail disclosure.

(Order P-561)

The proponents have not addressed the "supplied in confidence" element of the requirements under section 17(a). The proponents' engineer requests that the information be kept confidential, but does not provide any information about any expectations of confidentiality at the time the information was provided to the Ministry.

In Order PO-1825, referred to above, and dealing with the same stream diversion project at issue in this appeal, Adjudicator Laurel Cropley stated the following:

> The *Lakes and Rivers Improvement Act* is silent on the issue of the confidentiality of information obtained pursuant to its authority. In this regard, this *Act* does not create an "express" expectation of confidentiality. I interpret this silence as also meaning that it does not create an "implicit" expectation of confidentiality in that it does not indicate, imply or lead the reader to reasonably conclude that any part of the process, including the submission of required materials and information, will be received or treated confidentially by the Ministry. Taken by itself, this fact neither assists nor detracts from the primary affected party's position that the records were supplied "implicitly" in confidence.
>
> With respect to the agent's submissions, I accept that a party entering into a private business relationship would maintain the confidentiality of the client's information and/or records prepared within that relationship. However, in my view, the agent's expectations of confidentiality are held within the context of the interests of its business relationship with the client and do not assist me in determining whether the client held a reasonable expectation of confidentiality at the time the records were submitted to the Ministry on her behalf.
>
> In my view, the purposes of the *Lakes and Rivers Improvement Act* as set out in section 2 of that *Act* are relevant in determining whether the primary affected party's expectation of confidentiality was reasonably held. This section states:
>
> > The purposes of this *Act* are to provide for,
> >
> > (a) the management, protection, preservation and use of the waters of the lakes and rivers of Ontario and the land under them;
> >
> > (b) the protection and equitable exercise of public rights in or over the waters of the lakes and rivers of Ontario;
> >
> > (c) the protection of the interests of riparian owners;

(d) the management, perpetuation and use of the fish, wildlife and other natural resources dependent on the lakes and rivers;

(e) the protection of the natural amenities of the lakes and rivers and their shores and banks; and

(f) the protection of persons and of property by ensuring that dams are suitably located, constructed, operated and maintained and are of an appropriate nature with regard to the purposes of clauses (a) to (e).

In my view, the purpose of the legislation is to protect the public interest generally in ensuring the preservation and proper management of the natural environment, as well as protecting the interests of other property owners, while establishing procedures for enabling private property owners to deal with their property (in part). Although this *Act* recognizes that property owners may wish to alter the natural environment on property they own, the overall intent of the legislation is to protect the greater public interest in the desirability of taking such action and in the manner in which it is done.

I do not accept the appellant's argument that because the *Lakes and Rivers Improvement Act* does not require a public meeting or notice to neighbours, that "the *Act* itself dictates that the matter is private and not open to public view". On the contrary, I find that the public accountability component of the *Lakes and Rivers Improvement Act* is consistent with openness.

I also note that sections 10 - 12 of the *Lakes and Rivers Improvement Act* provide that an applicant is entitled to request an inquiry into a decision of the Minister that he or she intends to refuse an approval under that *Act*.

In particular, section 11(8) indicates that the parties to an inquiry include, among others, "any person whom the inquiry officer determines has a direct interest and should be added as a party". Section 11(9) refers to disclosure requirements during an inquiry which includes, in part, "all documents that the party proposes to use at the inquiry". Section 11(13) provides that sections 6 - 16, 21, 21.1, 22 and 23 of the *Statutory Powers Procedure Act* (the *SPPA*) apply, with necessary modifications, to an inquiry.

Section 9 of the *SPPA* provides generally that hearings shall be open to the public except in certain specific circumstances.

It is arguable that unless the applicant chooses to request an inquiry, none of these provisions are relevant. However, in my view, the availability of them goes to the heart of the reasonableness of an applicant's expectations and the basis upon which these expectations are formed. Viewed objectively, the provisions relating

> to dispute resolution when combined with the public interest underlying the *Lakes and Rivers Improvement Act* refute the argument that the records were prepared for a purpose that would **not** entail disclosure. I find that they do not form a basis upon which an applicant could reasonably expect that confidentiality would be maintained or could be supported.
>
> Further on this issue, the agent indicates that, at least in the early stages of development, neighbours were contacted and given an opportunity to have input into the design. The agent does not indicate whether possible designs were shown to the neighbours. However, in my view, discussions with individuals outside the client/agent relationship on issues of design which may have ultimately made their way into the final drawings is not consistent with an expectation of confidentiality.
>
> Based on the totality of the submissions on this issue, I am not convinced that, at the time the records were supplied to the Ministry, there was any communication between the parties with respect to expectations of confidentiality. Nor am I convinced that there was any objective basis for a reasonable expectation on the part of the affected parties that the records were submitted to the Ministry in confidence. Therefore, I find that the Ministry and affected parties have failed to satisfy the second requirement of the section 17(1) test for the records at issue.

The Ministry submits that despite the above, a reasonable person could have a reasonable expectation of confidentiality at the time he or she makes an application under the *LRIA*.

The Ministry and the affected parties have not persuaded me that I should depart from PO-1825 in the circumstances of this case. I find that, given the general statutory context described above within which the application was made, which is silent on the issue of confidentiality, and the absence of any evidence about any express or implicit understandings regarding confidentiality between the Ministry and the proponents, there is no sufficient basis to find a reasonable expectation of confidentiality within the meaning of section 17(1).

Therefore, I find that the Ministry and the affected parties have failed to satisfy the second requirement of the section 17(1) test for the records at issue.

Part Three: Reasonable Expectation of Harm

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, including section 17(1), in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party or parties with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

In the present appeal, the Ministry and the affected parties, as the parties resisting disclosure, must provide detailed and convincing evidence to establish a reasonable expectation of probable harm, in this case one or more of the harms outlined in sections 17(1)(a), (b) and/or (c) of the *Act*.

The proponents have not offered any specific evidence of the type of harm described in section 17(1), submitting generally that the appellant will use the information to "create objections" to the project. The proponents' engineer submits that disclosure of the information in the records will interfere with the relationship between it and its client, result in the loss of future revenue and interfere with its ability to control documents for the site. It is submitted that uncontrolled release could "potentially result in communication misunderstandings between [the engineer] and construction contractors or other individuals not working with the correct document issue." The Ministry relies on the representations of the affected parties on this issue.

I am not satisfied that the affected parties have provided sufficient evidence to establish a reasonable expectation of probable harm. The harms outlined in the submissions are speculative and there is an insufficient basis to suggest any real likelihood that they will occur.

In the result, I find that pages 00056, 00067, 00071 and 00072 fail to meet the first requirement in section 17(1). Although pages 00020 to 00034, 00038 to 00055, 00057 to 00066 and 00069 to 00070 contain "technical information", they fail to meet the second and third requirements of section 17(1). Accordingly, none of the records for which section 17(1) has been claimed qualify for exemption under this section.

Because of my conclusion that section 17(1) does not apply, it is not necessary to consider the application of section 49(a).

PERSONAL INFORMATION/INVASION OF PRIVACY

I will now turn to consider whether any information in the records is exempt from disclosure by application of sections 21 and/or 49(b). The Ministry has applied section 21 to specified portions of pages 00001 to 00015, 00017, 00035, 00051, 00055, 00056, 00067 and 00072.

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 orders of this office have held that an individual's name as contained in a building permit application or a land use permit constitutes the individual's personal information [Orders M-138, M-197, M-911 and PO-1699]. I find that information identifying an individual as a property owner in correspondence relating to an application under the *LRIA* should be treated in

a similar fashion. I am satisfied therefore that the records contain personal information of the property owners.

In addition to the pages cited by the Ministry, on my review of the records, I also find that pages 00027, 00030, 00034, 00052 to 00054, 00063 and 00065 contain information identifying one of the property owners making the application under the *LRIA*.

Further, I find that page 000067 contains personal information of the appellant as well as of a property owner.

Certain portions on pages 00055, 00056 and 00072 to which the Ministry has applied section 21 contain references to an individual in his professional capacity. 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]. I am satisfied that the information about this individual is not his personal information.

I now turn to consider whether the disclosure of the personal information in the records would constitute an unjustified invasion of personal 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(b) of the *Act* provides an exception to this general right of access, in the following terms:

> 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) of the *Act*, where a record contains the personal information of both the requester and 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. Accordingly, I will consider whether the disclosure of the personal information in page 00067 would be an unjustified invasion of the personal privacy of the property owner identified there, and is exempt from disclosure under section 49(b).

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information, unless one of the exemptions set out in that section applies. Therefore, I will consider whether the disclosure of pages 00001 to 00015, 00017, 00027, 00030, 00034, 00035, 00051 to 00066 and 00072 would be an unjustified invasion of personal privacy under section 21(1).

In both these situations (where the record contains the personal information of the appellant and of others, and where the record contains the personal information of others only), sections 21(2), (3) and (4) 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 21(2) provides some criteria for the head to consider in making a determination as to whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information whose disclosure is *presumed* to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

With respect to section 21(3), 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]. In other words, once section 21(3) is found to apply, the factors in section 21(2) cannot be resorted to in favour of disclosure.

The affected parties have not addressed section 21 in their submissions. The Ministry submits that the information in the records identifying individual property owners is covered by the presumption in section 21(3)(f), which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The appellant has not made submissions on section 21(3)(f). I am satisfied that, to the extent that the records identify individual property owners in the context of the submission of detailed plans and drawings describing proposed changes to their property, the disclosure of their personal information is covered by the presumption in section 21(3)(f).

Despite my finding that the section 21(3)(f) presumption applies, with respect to page 00067, I find that it would be an "absurd result" to withhold the name of the property owner from the appellant. Previous orders of this office have established that where an appellant has supplied the information at issue to the institution, or is aware of the information, it would be an absurd result to withhold it in cases where the appellant's "higher right of access" under section 47(1)

has been invoked. In other words, where the record contains the information of both the appellant and of another individual, and the information of the other individual was either originally supplied by or known to the appellant, the absurdity in not disclosing the information outweighs the privacy protection principles at stake, and section 49(b) will not operate to preclude disclosure (see, for example, Orders PO-1819 and MO-1323).

With respect to the remaining pages to which section 21(3)(f) applies, however, the reasoning in the above orders does not apply. The personal information in those pages is accordingly exempt from disclosure under section 21(3)(f).

ORDER:

1. I order the disclosure of the records, with the exception of portions on pages 00001 to 00015, 00017, 00027, 00030, 00034, 00035, 00051 to 00056, 00063, 00065 and 00072. For greater certainty, I have provided the Ministry with a copy of these pages with the portions to be withheld highlighted.

2. I order disclosure to be made by sending a copy of the records to the appellant, with the highlighted portions severed, no later than **October 25, 2002**, but no earlier than **October 21, 2002**.

3. In order to verify compliance with this order, I reserve the right to ask the Ministry to provide me with a copy of the material sent to the appellant.

Original signed by: September 20, 2002
Sherry Liang
Adjudicator