



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2322

Appeal PA-040123-1

Ministry of Transportation



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BACKGROUND:

In 1987, the Ministry of Transportation and Communications (now the Ministry of Transportation) (the Ministry) asked the Ministry of the Environment (MOE) to undertake an investigation into possible salt contamination of wells on private property along Highway 654 in Callander, Ontario. The investigation involved a total of 27 residences. MOE completed its investigation and submitted a report to the Ministry. The report included an outline of the results of the investigation and recommendations for ways to address them. In response to this report, the Ministry agreed to drill new wells for various property owners, and entered into agreements with the property owners and contractors to undertake the work. In that context, various documents were exchanged between property owners and the Ministry, and between the Ministry and the contractors.

NATURE OF THE APPEAL:

The Ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information from the current owner of a property that had been investigated by MOE in 1987. The requester stated that she had not been advised of any issues concerning possible salt contamination when she and her husband purchased the property in 2003. She also stated: “It was brought to our attention that [the Ministry] had made payment to the previous owners ... as it was [the Ministry] road salt that caused the damage.”

The requester sought the following information:

1. How much was the settlement?
2. When was it paid to the [previous owners]?
3. Has there been new legislation or regulations introduced to our government to seal off wells once they have been identified to be contaminated?
4. If legislation does exist to seal off contaminated wells who is responsible to do so?
5. Would it be possible to obtain all documents and test results which were provided to [the Ministry] and the [previous owners]? We are looking for information from engineer reports, laboratory reports and any letters or correspondence between [the Ministry] and the [previous owners]. Would it be possible to get a copy of the file?

The Ministry provided the requester with access to twenty-nine pages of records responsive to parts 3 and 4 of the request, and denied access to the ninety-four pages of records responsive to parts 1, 2 and 5. Section 21(1) of the *Act* (invasion of privacy) was the only exemption claim relied on by the Ministry as the basis for withholding the remaining records.

The requester (now the appellant) appealed the Ministry’s decision.

The mediator assigned to the file attempted to notify the previous owner of the property as an affected person with an interest in the outcome of the appeal. The affected person's spouse responded indicating that her husband had died several years ago. She also objected to the disclosure of any records containing her or her husband's personal information and asked that she not be contacted again.

Mediation was not successful, so the appeal was transferred to the adjudication stage.

I began my inquiry by sending a Notice of Inquiry to the Ministry, setting out the facts and issues in the appeal and seeking written representations. The Ministry responded with representations. I then sent the Notice to the appellant, along with a copy of the Ministry's representations. The appellant also submitted brief representations.

RECORDS:

The records at issue comprise 94 pages of documents dated in 1987 and 1988. They consist of:

- The investigation report produced by MOE for the Ministry on possible salt contamination along Highway 654 in Callandar.
- Procurement documentation issued by the Ministry to contractors for well drilling projects on various properties.
- Lists of names address and/or telephone numbers of various property owners that were involved in the MOE investigation and subsequent well drilling projects.
- Well water analysis and test results taken on the property now owned by the appellant. Some records also include comparable information for other properties.
- Handwritten notes exchanged among various Ministry staff relating to the well drilling project.
- Handwritten and typewritten notes to file relating to the well drilling project.
- Copies of invoices and other administrative documents relating to the payment of contractors for well drilling work.
- A letter from the Ministry to the former property owner setting out the arrangements for well drilling on the property.
- The "Settlement Agreement" entered into by the former property owner and the Ministry for well drilling on the property.

DISCUSSION:

PERSONAL INFORMATION

General principles

In order for a record to qualify for exemption under section 21(1), as claimed by the Ministry for all records at issue in this appeal, the record must contain “personal information”, as defined in section 2(1) of the *Act*. Under this definition, “personal information” means “recorded information about an identifiable individual”, including any number, symbol or other particular assigned to the individual (paragraph (c)), the address or telephone number of the individual (paragraph (d)), the views and opinions of another individual about the individual (paragraph (g)), or 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 (paragraph (h)).

To qualify as personal information, the information must be about the individual in a personal capacity.

Representations

The Ministry takes the position that all of the records contain “personal information” relating to the former owner of the property in question:

The Ministry submits that the records disclose the concerns the affected person had about his property, his state of knowledge about his property and his interactions with the Ministry concerning his property. In deciding to deny access to the records responsive to items 1, 2, and 5, the Ministry was mindful that one of the central purposes of the *Act* is to protect personal privacy, and that section 21 is a mandatory exemption. While there is an argument to be made that the information concerns property as opposed to individuals, the Ministry determined that the prudent course was to treat the information as personal information.

The Ministry goes on to identify a number of previous orders that dealt with the involved properties where it was determined that records contained “personal information” (Orders PO-2048, PO-1699, M-197 and MO-1230); and attempts to distinguish other orders which rejected “personal information” claims on the basis that the information related to properties and not to individuals in a personal capacity (Orders PO-1847 and PO-2295).

The Ministry sums up its position on the “personal information” issue as follows:

Mindful of these Orders, the broad definition of “personal information” in the *Act*, the mandatory nature of the exemption and the importance of privacy protection under the *Act*, the Ministry took the position that, to the extent that the records at

issue in this appeal reflected the affected person's concerns over the state of his property and his interaction with the Ministry regarding his property, the information contained in these records is personal in nature.

The appellant's representations do not deal with any of the components of the definition of "personal information" in section 2(1).

Analysis and Findings

Having carefully considered the Ministry's representations and the various orders identified in support of its position, I have reached the conclusion that none of the records contain the former property owner's "personal information". In my view, the records are more accurately described as containing information **about the property** and not **about the former owner** in a personal capacity.

The treatment of information concerning residential properties was first addressed by Commissioner Sidney B. Linden in Order 23. The Commissioner made the following findings, which have been applied in a number of subsequent orders of this office (e.g. Orders MO-188, MO-189, PO-1847):

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "...any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The *Concise Oxford Dictionary* defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, **about** an identifiable individual? In my view, the answer is "no"; the information is **about a property** and not **about an identifiable individual**.

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal information".

Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information **relating to the individual** or where the disclosure of the name would reveal other information **about the individual**" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about

the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals. [emphasis in original]

Applying Commissioner Linden's reasoning to the circumstances of this appeal, I find that all of the requested records contain information about a property, specifically the property currently owned by the appellant. Back in 1987, a new well was drilled on this property, along with others in the same vicinity, in order to address contamination issues caused by road salt used by the Ministry that had leaked into the existing wells. The Ministry retained the services of MOE to investigate the cause of the problems on these properties and, as a result of MOE's investigation, administrative arrangements were made with the various property owners, including the former owner of the appellant's property, in order to proceed with the well drilling project. No particular personal considerations were relevant in this context and, in my view, the records created by the Ministry contained information about the various properties and not about the former owner in any personal sense.

I should also note that none of the records contain "information relating to financial transactions" (paragraph (b) of the definition) involving the former property owner. Although one of the records is titled "Settlement Agreement", this record contains no financial information and the transaction reflected in this record is not accurately characterized as a "financial" one.

Simply stated, the information at issue in this appeal is "about" the property in question and not "about" the former owner. As such, it falls outside the scope of the definition of "personal information" in section 2(1) of the *Act*. Because only "personal information" can qualify for exemption under section 21(1), this exemption has no application in the circumstances of this appeal.

Other Issues

Portions of certain records include the names, addresses and telephone numbers of various property owners other than the former owner of the appellant's property, and other records outline various test results from these neighbouring properties. It is clear from the wording of the appellant's request that she is only interested in receiving information about her own property, and I find that information concerning the owners and test results on other properties falls outside the scope of the appeal and should not be provided to the appellant.

In its representations, the Ministry states:

In the course of reviewing the records denied to the appellant for the preparation of these representations, the Ministry noted that two of the records, ..., contain unit price information provided by third parties contracting with the Ministry. It is submitted that this information should be severed if the Ministry is ordered to disclose these records to the appellant.

On my review of the records I am unable to identify any so-called "unit price" information and, in any event, unit prices relating to work undertaken in 1987-88 would be meaningless today. The statements made by the Ministry are, in my view, not sufficient to warrant further consideration under section 17(1) and I decline to do so.

In summary, I find that none of the records contain the "personal information" of the former owner of the appellant's property, and they should all be disclosed, subject to the severance of information relating to other property owners and test results relating to these other properties.

ORDER:

1. I order the Ministry to disclose all responsive records to the appellant by **October 7, 2004**. Because there seems to be some confusion regarding the numbering of the various records in this appeal, I will provide the Ministry with a copy of the pages containing non-responsive information, highlighting the portions that should not be disclosed.
2. In order to verify compliance with Provision 1, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant, upon my request.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

September 16, 2004