



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2349

Appeal PA-030421-1

Ministry of Health and Long-Term Care



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ministry of Health and Long-Term Care (the Ministry) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) made a request under the *Act* for access to water test results for a property located at a specified municipal address (the property). The appellant also provided the surname of the previous owner of the property (the affected person). The appellant stated in her request that she was making her request for “health and safety reasons.” The appellant is the current owner of the property. She purchased the property from the affected person. The tests were undertaken before the appellant owned the property.

The Ministry identified six one-page water test result records dating from 2002 and 2003, and denied access to them in their entirety on the basis of the personal privacy exemption at section 21. The Ministry stated that “water test results are regarded as the personal information of the individual who owned the property at this time, and cannot be released to any other individual, without the written authorization of that property-owner.”

The appellant then appealed the Ministry’s decision to this office. In her letter of appeal, she stated that she is “not requesting any personal information of the property owners” and that, in her view, the records should not be considered personal information. She also stated that she has been working in conjunction with the Ministry, the Ministry of the Environment (MOE), her local municipality and private companies “in order to review the water situation that is occurring and to try to resolve these issues.”

During the mediation stage of the appeal, the Mediator wrote to the affected person to determine whether or not she consented to disclosure of the records. The affected person did not provide her consent to disclosure.

Mediation was not successful in resolving the issues in the appeal, so the matter was streamed to the adjudication stage of the process for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Ministry and the affected person. Both the Ministry and the affected person submitted representations. The Ministry agreed to share its representations in their entirety with the appellant. The affected person agreed to share a summary of her representations with the appellant.

I then sent a Notice of Inquiry to the appellant along with the Ministry’s representations and a summary of the affected person’s representations. The appellant submitted representations in response and agreed to share them in their entirety with the Ministry and the affected person.

I felt that the appellant’s representations raised issues in response to the Ministry’s and affected person’s representations to which they should be given an opportunity to reply. I provided both the Ministry and affected person with the appellant’s representations and invited them to submit reply representations. The Ministry provided reply representations, the affected person chose not to do so.

After the close of representations the appellant advised this office that for records that pre-date May 2003 she was no longer interested in the portions of those records that contain the affected person's name and telephone number but that she continues to be interested in the municipal property address. I note that all six records pre-date May 2003. Accordingly, the affected person's name and telephone number are no longer at issue. The information that remains at issue under section 21 is described below under the "Records" section of this order.

RECORDS:

The records at issue consist of six water test reports. The reports are entitled "Bacteriological Analysis of Drinking Water for Private Citizen, Single Household Only". The information at issue in these reports includes:

- return address of affected person (for receipt of test results)
- location of water source (including municipal property address)
- date water sample collected
- local health unit number
- test results, including indication of presence and amount of contaminants
- date of testing
- initial of individual who performed the test

DISCUSSION:

PERSONAL INFORMATION

What constitutes "personal information"?

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

...

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

...

- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- ...
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information (Order 11).

Parties' representations

The Ministry submits that the information contained in the records qualifies as personal information under paragraphs (d), (f) and (h) of the definition of personal information in section 2(1) of the *Act*.

With respect to section 2(1)(d), the Ministry submits that the records contain the affected person's "address" and that this qualifies as personal information under the *Act*. The Ministry submits that severing this information from the records "would not remove personal information from the records" because the appellant "clearly knows the identity of the affected [person]". Therefore, the Ministry states that even if this information is withheld from the appellant the records would still contain information about an "identifiable" individual. The Ministry refers to Order MO-1510 to establish that where the appellant is likely aware of or could reasonably ascertain the identity of an individual, the information in the record would still be about an "identifiable" individual even if that person's name was removed from the record.

Regarding section 2(1)(f), the Ministry submits that the information contained in the six records represents correspondence sent to the Ministry by the affected person that is implicitly or explicitly of a private or confidential nature. The Ministry states that if a homeowner wants to have his/her private water supply tested for bacteria, he/she must initiate the process by submitting a water sample along with a test requisition form to one of the Ministry's Public Health Laboratories (PHLs) located throughout the province. The Ministry states that the individual fills out the form by providing personal information setting out his/her home address and the location of the water source. The Ministry states that it is the policy of the PHLs to perform the test only for the owner of the property (or an agent acting on the owner's behalf) on which the water source is located. Once the test is performed the results are reported on the requisition form, which is then returned to the individual who requested the test. The Ministry states that it is the policy of all Ministry PHLs to release the test results only to the individual who requested the test. The Ministry, therefore, submits that it treats the test results as

confidential information and has put safeguards in place to protect the privacy of an individual who submits a completed requisition form. The Ministry states that the affected person, in this case, would have had an implicit, if not an explicit, expectation that this correspondence would be treated as confidential.

With regard to section 2(1)(h), the Ministry states that the records reveal “other personal information about the individual”. The Ministry submits that the affected person may have requested several bacterial tests of the water when she owned the property since she may have had concerns about the water quality of her private water source. The Ministry submits that the records identify not only the quality of the affected person’s water at the time of testing but also what she knew in respect of the water quality. The Ministry submits that this is not merely information “about the property”, but rather, information about the affected person’s management of her property and state of knowledge about the property.

The majority of the representations submitted by the affected person do not address the issues in this appeal. Those portions that are relevant to this appeal can be summarized briefly. The affected party states that the water tests obtained for the requested period are the affected person’s personal information and that the release of this information could adversely impact the affected person’s professional reputation. The affected person questions the appellant’s stated motivation for requesting this information for health and safety reasons. She fails to see how water tests that were conducted while her family owned the property in question would be of interest to the current owners for health and safety reasons.

The appellant provides detailed submissions in response to those of the Ministry. The appellant’s main points can be summarized as follows:

1. The records contain water quality testing results done on the property and, therefore, the results do not constitute personal information under section 2(1) of the *Act*. The sole purpose for requesting the information is to identify and correct water quality issues.
2. The appellant purchased the subject property from the affected person and, therefore, the affected person’s identity and the address of the subject property is known to her and in the public domain. In support of this position, the appellant includes with her representations real estate documents from the purchase and sale that provide the address of the property. In addition, the appellant notes that the affected person’s name and address was listed in the local telephone book in 2002 and 2003.
3. The appellant indicates that she possesses statements and documentation received from the affected person regarding water test results. She encloses copies of two of the records at issue, which she says the affected person released to her. The appellant’s position is that the affected person has, therefore, provided implied consent to the release of the records.

In reply, the Ministry made submissions in response to the appellant’s three points.

Regarding the distinction between “personal information” and “information about a property”, the Ministry comments on recent Order PO-2322 and distinguishes the circumstances in that case from those in this appeal.

Order PO-2322 concerns a request for access to information from the current owner of a property that had been part of an investigation by the MOE on behalf of the Ministry of Transportation (MTO) regarding possible salt contamination of wells on private property in Callander, Ontario. The requester indicated in her request that she and her husband had not been advised of any issues concerning possible salt contamination when they purchased their property. In that case, Assistant Commissioner Tom Mitchinson found that none of the records at issue (including water analysis and test results taken of the property now owned by the requester) contained the former owner’s personal information. He found that the records are more accurately described as containing information “about the property”.

The Ministry submits that the circumstances in this case are distinguishable because in this appeal the testing was initiated by the affected person while in Order PO-2322 the testing was initiated by the Ontario government. The Ministry states that since the water tests at issue in this appeal resulted from an individual’s request, and reflect an individual’s concern about her property, the records relate to the individual as opposed to the property alone. The Ministry also suggests a further distinguishing feature. The Ministry asserts that the affected person could have chosen to have the testing done by a private water testing company in which case the appellant would not have had access to the test results. The Ministry submits that the affected person should not be prejudiced by her choice to have the testing done by the Ministry rather than by a private company.

Regarding the appellant’s statement that the affected person’s identity and address are known to him and in the public domain, the Ministry states this knowledge is irrelevant in circumstances in which the affected person does not want any further personal information disclosed to the appellant. The Ministry further submits that since the information at issue may be a source of disagreement between the appellant and affected party, disclosure would promote further incursions into the affected person’s personal privacy.

Regarding the appellant’s suggestion that the affected person has provided implied consent to the release of her personal information, the Ministry states that any previous disclosures cannot be used as the basis for establishing implied consent to the release of the “remaining records”. The Ministry submits that the affected person’s actions throughout the appeal process are consistent with having not provided consent to disclosure. The Ministry states that the affected person was consulted by the mediator during the mediation process and the affected person did not provide her consent to the release of the records. The Ministry states that the appellant cannot rely on the concept of implied consent in circumstances where the affected person has expressly not consented to disclosure.

Analysis and findings

I have carefully considered the parties representations and, in particular, the application of Order PO-2322 to the circumstances of this case. I have come to the conclusion that with the exception of the affected person's "return address" the information at issue does not constitute her "personal information".

Dealing first with the affected person's "return address", I am satisfied that this information meets the definition of personal information under section 2(1)(d) as it represents the affected person's "place of residence" (Order 23).

Turning to the remaining information, I find that it is more accurately described as information **about the property** and **not about the affected person** in a personal capacity.

I appreciate that the Ministry would like me to distinguish the circumstances in this case from those in Order PO-2322 on the basis that the affected person in this appeal initiated the testing process out of personal concern for her water quality while in Order PO-2322 the testing process was initiated by the government as part of an investigation. The Ministry seeks to reinforce this position by suggesting that if the affected person had retained a private water-testing firm to perform the testing the appellant would not have access to the test results and that, therefore, the affected person should not be prejudiced by its decision to use the Ministry.

While I understand the Ministry's argument, I find the differences superficial. The affected person in Order PO-2322 also had concerns about the state of his property. In fact, in its representations regarding the characterization of the information at issue as personal information the MTO states:

[T]he [MTO] 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.

In my view, the fact that the affected person in this appeal initiated the testing while in Order PO-2322 he did not is of no consequence. In addition, the affected person's decision to undertake testing through the Ministry rather than through a private testing facility is irrelevant. The affected person made the decision to use the Ministry's services and so any records created as a result of the Ministry's testing are subject to the *Act*.

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 (see, for example, Orders MO-188, MO-189, PO-1847, PO-2322):

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 the information contained in the six water test reports, other than the return address, is information about the property and not about the affected person in a personal context. As a result, 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 to this information. Accordingly, I find that the information in the six water test reports, other than the affected person’s return address, should be disclosed to the appellant.

I will now examine the application of the section 21 personal privacy exemption to the affected person’s return address.

INVASION OF PRIVACY

If the information fits within any of the exceptions under sections 21(1)(a) through (f), it is not exempt from disclosure under section 21. The only one of these sections that could apply in this appeal is section 21(1)(f), which provides an exception to the exemption “if the disclosure does not constitute an unjustified invasion of personal privacy.”

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 institution 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. Section 21(4) refers to certain types of information whose disclosure 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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption [Order PO-1764].

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

Neither the Ministry's nor the affected person's representations deal specifically with the application of section 21 to the affected person's "return address". Instead, they focus on the application of section 21 to the test results and related information contained in the six water test reports, which I have already found does not qualify as personal information. On the other hand, the appellant has expressed an interest in knowing the "municipal property address" and she provides representations in support of her entitlement to this information. However, I note that the municipal property address forms part of the "location of water source", which I have found does not qualify as personal information. In my view, it is the location of water source that the appellant is seeking, not the affected person's return address. With regard to the return address, I view this as personal information and I see no factors weighing in favour of disclosure. Accordingly, I find this information exempt under section 21 of the *Act*.

ORDER:

1. I order the Ministry to disclose the portions of the six records at issue to the appellant no later than **January 7, 2005** but not before **December 31, 2004**, in accordance with the highlighted version of these records included with the Ministry's copy of this order. To be clear, the Ministry should not disclose the highlighted portions of this record.
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the Ministry to provide me with a copy of the records they disclose to the appellant.

Original signed by: _____
Bernard Morrow
Adjudicator

November 30, 2004