



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1936**

## **Appeal MA-050043-1**

### **Town of Innisfil**



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## **NATURE OF THE APPEAL:**

The Town of Innisfil (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a land development corporation for access to a copy of a letter written by a named individual (the affected person). The letter addressed a specific property development being undertaken in the Town by the requester.

The Town located the requested letter and denied access to it, claiming the application of the mandatory exemption in section 14(1) of the *Act*. The requester, now the appellant, appealed the Town's decision.

During mediation, the affected person was contacted by the Mediator assigned to the file and declined to consent to the disclosure of the letter to the appellant. As further mediation was not possible, the matter was moved into the adjudication stage of the appeals process.

I sought and received the representations of the appellant, initially. I then shared the complete submissions of the appellant with the affected person and the Town, along with a Notice of Inquiry. The Town indicated that it did not intend to submit any representations in response. The affected person provided me with representations in response to the Notice, which I then shared, in their entirety, with the appellant which submitted additional representations by way of reply.

## **RECORDS:**

The sole record at issue is a four-page letter dated November 30, 2004, addressed to the Town by the affected person.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **General principles**

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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another 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,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

### **The submissions of the parties**

The appellant takes the position that the record does not contain "personal information" about the affected person "other than, perhaps, her address and/or telephone number". The appellant goes on to argue that the record likely contains the personal views or opinions of the appellant *about another individual*, thereby taking the information outside of the definition of that term in section 2(1)(g). Rather, the appellant argues that because the personal opinions and views relate to the development corporation, its employees or its consultants, Town staff and/or members of Town Council, it thereby qualifies as the personal information of these individuals under section 2(1)(e), and not the affected person.

The appellant also seeks to refute any arguments from the Town or the affected person to the effect that the record includes information that falls within the ambit of section 2(1)(f). It submits that simply labelling a letter as “private and confidential” does not make it so; the contents of the record itself must be examined in order to determine the actual nature of the information contained therein. The appellant also suggests that because the affected person made her views about the development corporation known at a public meeting on the evening before the letter was written, it is unlikely that she cares if her views are made public through the disclosure of the record.

The appellant also suggests that the record may contain the views and opinions of the affected person about the development corporation’s employees and consultants, thereby qualifying as the personal information of these individuals under section 2(1)(g).

The affected person takes the position that the record represents correspondence sent by her to the Town that is implicitly of a private or confidential nature, thereby qualifying as her personal information under section 2(1)(f), undermining the appellant’s argument that she does not care whether the information contained therein is disclosed. The appellant notes that her letter was expressly marked as “personal and confidential” and contains only her private and personal opinions about the merits of the development under consideration by the Town.

The affected person also argues that residents of a municipality ought to be entitled to make their views on a proposed development known to their elected representatives without the risk of the disclosure of those views. Therefore, she submits that the information contained in the record qualifies as her personal information.

In its reply representations, the appellant suggests that principles of fairness dictate that it ought to be given access to the record in order to have the opportunity to refute the information contained therein. In addition, the appellant argues that in order for it to determine whether the affected person’s views are held by other members of the community, it needs to know exactly what she has said in her communication to the Town.

### **Findings**

In my view, the record contains only the personal information of the affected person. The record includes this individual’s address (section 2(1)(d)) and, more importantly, the views or opinions of the affected person about the actions of the Town, the County of Simcoe, the Lake Simcoe Region Conservation Authority, the proposed development and the development company and its consultants (section 2(1)(e)). The opinions expressed are personal to the affected person only and do not address the actions of any staff or employees of the bodies mentioned above, except in their professional capacities. I find that the affected person’s opinions do not reveal anything of a “personal nature” about these individuals. Accordingly, the information does not qualify as the personal information of any identifiable individuals other than the affected person within the meaning of section 2(1).

In addition, I find that the record also contains the personal information of the affected person as it represents correspondence which she sent to the Town that is implicitly of a private or confidential nature under section 2(1)(f). The record contains the affected person's perceptions of the environmental impact of various aspects of the development and the documentation provided by the developer in support of it. In my view, these views and opinions are personal to the affected person and were incontrovertibly of a private and confidential nature, based on the type of information contained therein.

The appellant's concerns about fairness in the approvals process involving the Town and the provisions of the *Planning Act* may be addressed in that forum. I do not agree that this is a relevant consideration in my determination of whether the record contains the personal information of the affected person. I will however, address this issue in my discussion below.

## **INVASION OF PRIVACY**

### **General principles**

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. One of the exceptions, that in section 14(1)(f), addresses the situation where disclosure does not constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

I find that the exceptions in section 14(4) have no application in the circumstances of this appeal.

If any of paragraphs (a) to (h) of section 14(3) apply, the disclosure of the personal information is presumed to represent an unjustified invasion of personal privacy under section 14(1). [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

### **Representations of the parties**

#### ***Section 14(1)(c) and (d)***

Sections 14(1)(c), (d) and (f) state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The appellant argues that the letter from the affected person to the Town was “collected and maintained specifically for the purpose of creating a record available to the general public”, as contemplated by section 14(1)(c) and that the *Planning Act* expressly authorizes the disclosure of the record to the appellant under section 14(1)(d).

In my view, the affected person’s letter was not intended to be made public and was not received by the Town for that purpose. In addition, the *Planning Act* disclosure regime described by the appellant in his representations does not specifically mandate the disclosure of the type of record that is the subject of this appeal. I cannot agree that a letter of this nature falls within the ambit of the “prescribed information” to be included within a “record” for the use of the Ontario Municipal Board under section 17 of the *Planning Act*. The record requested in this case does not form part of any such record. Accordingly, I find that neither sections 14(1)(c) nor (d) apply in the circumstances of this appeal.

#### ***Section 14(1)(f)***

The appellant takes the position that the considerations favouring the disclosure of the information at issue listed in sections 14(2)(a) and (d) apply in the circumstances of this appeal and that disclosure would not constitute an unjustified invasion of personal privacy under section 14(1)(f). These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

The appellant submits that section 14(2)(a) is applicable because the *Planning Act* requires that the decision-making process undertaken by municipal councils be transparent and that “its decisions should be based on information that can be tested and scrutinized by others.”

Similarly, the appellant argues that the information is relevant to a fair determination of its rights under section 14(2)(d). It argues that the approval process is far from over, regardless of the fact that the Town Council adopted the official plan amendment sought by the appellant. It points out that additional approvals are required from the County of Simcoe, and, ultimately, perhaps the Ontario Municipal Board. The appellant submits that in order for it to properly respond to any comments or allegations made about it or its consultants, in respect of the subject matter of the development in question, the affected person's letter must be disclosed. The appellant goes on to argue that "[T]o do otherwise would potentially allow [the affected person] an opportunity to influence the decision-maker without affording [the appellant] a right to respond. Thus, disclosure is required to ensure an impartial hearing."

The appellant also relies on the Commissioner's decision in Investigation Report I94-064P in which she stated that:

. . . in order for a complaint to be fairly and properly dealt with, the person complained about must be advised of what they are accused of, and by whom, to enable them to address the validity of the complaint. The complainant must also be informed of the direct response to the allegations.

The appellant further argues that section 8 of the *Statutory Powers and Procedure Act* requires that, when the good character, propriety of conduct or competence of a party is an issue in a proceeding, the party is entitled to be furnished with reasonable information of any such allegations *prior to the hearing*. [my emphasis]

The affected person responded to the appellant's representations. With respect to the application of section 14(2)(a), the affected person argues that:

[A]ny concerns of the municipal council or on appeal of the decision which may arise as a result of the contents of the Letter. . . will be put to the Appellant by the appropriate council or board representative during the planning or appeal process and as part of council's own submissions, if council or a board member considers the contents of such letters relevant. The Appellant will have a chance to respond to council or the board's concerns at that time. It is not required that the Letter containing the private opinions of a person be disclosed to the Appellant for it to be able to respond to its contents.

The affected person also argues that, with respect to section 14(2)(d), there is no prescription against the communication of an individual's views to a municipal council in the context of the planning or appeals process, unlike the rules governing proceedings before a court. In effect, the affected person argues that the process and the concomitant rules regarding disclosure are different in the context of decision-making around municipal planning issues.

Finally, the affected person argues that a private individual has a right to communicate her personal views on the proposed development and that it was her intention to make that

submission on a confidential basis, as evidenced by the use of the terms “Personal and Confidential” in the record. For this reason, the affected person argues that section 14(1)(h) is especially compelling in the circumstances.

### **Findings under section 14(1)**

I have reviewed the record at issue and conclude that none of the presumptions in section 14(3) have any application to the information. In order to determine whether the disclosure of the personal information in the record would not constitute an unjustified invasion under section 14(1)(f), I must examine each of the factors in section 14(2), as well as any unlisted considerations and balance those favouring privacy protection against those favouring disclosure.

First, I find that the factor favouring disclosure in section 14(2)(a) has little application in the circumstances of this appeal. The activities of the institution, in this case the Town, are not the focus of the public scrutiny urged by the appellant. Rather, the appellant seeks to impugn or attack the position taken by the affected person in her opposition to the proposed development. I cannot, accordingly, give this consideration much weight when balancing the factors favouring disclosure against the affected person’s right to privacy.

For section 14(2)(d) to be apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[Order PO-1764; see also Order P-312, upheld on judicial review in Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner) (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

In my view, the right referred to by the appellant is its legal right to obtain the necessary permission from the Ontario Municipal Board and the County of Simcoe to proceed with its development application. I further find that this right is related to the legal requirements necessary to obtain such permission. However, I cannot agree that the personal information in the record has some bearing or is significant to the determination of the right in question. The



affected person's comments do not speak to the broader issues surrounding the approval of the development in question and the disclosure of the personal information in the record is not of sufficient significance to the success or failure of the appellant's development plans as to bring it into the realm of section 14(2)(d).

Accordingly, I find that the personal information does not have sufficient relevance or significance to the issues that may be under consideration at some future proceeding in relation to the proposed development. Similarly, I also do not agree with the position taken by the appellant that the disclosure of the personal information of the affected person is required to allow it to prepare for a proceeding or to ensure an impartial hearing.

I find that the consideration listed in section 14(2)(d) is not applicable and I am, therefore, unable to afford it any weight when balancing the appellant's right of access against the affected person's right to privacy.

I find that the section 14(2)(h) consideration raised by the affected person is compelling. In this case, as is her right, the affected person wished to comment on a consultant's report submitted to the Town with respect to certain environmental aspects of the appellant's proposal. The affected person is a private individual and the record clearly sets out her personal opinions and views on the consultant's report. I find that the evidence clearly supports the affected person's position that the record was prepared and was intended only for the use of the Town Council. Its contents clearly indicate that it was not intended to be made public or shared with the appellant. I find that section 14(2)(h) is a very significant consideration favouring the protection of the affected person's privacy.

Balancing the appellant's right of access against the affected person's right to privacy, I find that the arguments favouring privacy protection are more compelling. The affected person chose to make submissions to a public body on a subject that she clearly felt strongly about. I have no evidence before me to indicate that these opinions were given in a professional capacity, as opposed to simply the strongly-held beliefs of a citizen of the community. I am equally unable to determine how much weight the Town gave to the affected person's comments when it agreed to amend its official plan to "establish a policy framework that would permit the development proposal". I find that the equities in this case favour the protection of privacy. As such, I conclude that the disclosure of the personal information in the record would constitute an unjustified invasion of personal privacy and it is, therefore, exempt from disclosure under section 14(1).

## **PUBLIC INTEREST IN DISCLOSURE**

The appellant has also provided some additional representations supporting its argument that there exists a "public interest" in the disclosure of the personal information contained in the record, within the meaning of section 16 of the *Act*. This section reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

In my view, the interest being advanced by the appellant in this situation is essentially a private one involving the furtherance of its own development proposal. I cannot agree that there exists the type of public element necessary to bring in the operation of the “public interest override” provision in section 16. I further find that the private interest in the disclosure of the personal information at issue in this appeal cannot be said to raise any issues of more general application, as was the case in Order MO-1564.

I conclude by finding that section 16 has no application in the circumstances of the present appeal.

**ORDER:**

I uphold the Town’s decision not to disclose the record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
June 21, 2005