Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2145

Appeal MA-060060-2

Town of Innisfil

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BACKGROUND:

The Town of Innisfil (the Town) held a public meeting to consider applications for official plan and zoning by-law amendments proposed by a subsidiary company of a land development corporation, in relation to a proposed resort development. As described in more detail below, the land development corporation is the requester and subsequently became the appellant in two requests and appeals under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The second request and appeal are the subject of this order.

At the public meeting, a number of individuals spoke in support of, and in opposition to, the land development corporation's proposed amendments. Before individuals spoke at the public meeting, they were required to complete a sign-in form. The sign-in form collected the individual's name, contact information and written comments. The sign-in form also asked the individual to check a box to indicate whether they want to be contacted and advised when Council will be making a decision concerning the proposal.

The Town eventually approved the proposed amendments, but pursuant to the *Planning Act*, further approval is required by the County of Simcoe (the County) or, alternatively, the Ontario Municipal Board (OMB). As well as approving changes to its official plan, the Town subsequently passed zoning by-law amendments establishing a resort community zoning by-law concerning the lands for which the resort development is proposed.

Because the County did not deal with the proposed amendment to the Town's official plan, and also did not amend its own official plan, the land development corporation filed appeals to the OMB. A local association also filed an appeal of the Town's approval of the official plan and zoning amendments to the OMB. The OMB appeals remain outstanding.

As mentioned above, this order relates to the second request and appeal by the land development corporation under the *Act*. In its first appeal under the *Act* (the previous appeal), which concluded with the issuance of Order MO-1936, the land development corporation had asked the Town for a copy of a letter written by a named individual (the affected person) who spoke at the public meeting. In Order MO-1936, Adjudicator Donald Hale upheld the Town's decision denying access to the letter, finding that it was exempt under section 14(1) of the *Act* (personal privacy) because disclosure would constitute an unjustified invasion of the personal privacy of the affected person.

The land development corporation subsequently filed an application for Judicial Review of MO-1936 which is scheduled to be heard by the Divisional Court.

NATURE OF THE APPEAL:

As already noted, the land development corporation submitted a second request under the *Act* to the Town. The second request was for access to the sign-in form completed by the affected person when she attended the public meeting referred to above. This appeal deals with the land development corporation's request for the sign-in form.

Upon receipt of the land development corporation's request for the sign-in form, the Town granted partial access to the record but denied access to parts of it pursuant to the exemption at

section 14(1) of the *Act* (personal privacy). Through its legal counsel, the land development corporation (the appellant) appealed the Town's decision to this office.

During mediation, the appellant's representative clarified that the appellant is only seeking the "Comment" portion of the record. It does not seek access to the other severed information, which consists of the affected person's home address and telephone number.

No other issues were settled during mediation and the appeal moved on to the adjudication stage. I sent a Notice of Inquiry to the appellant, outlining the background and issues in the appeal and inviting representations. The appellant responded with brief representations, enclosing and directing me to consider its written submissions in the previous appeal and its Notice of Application for Judicial Review of Order MO-1936. The appellant's representations also referred to its counsel's letter initiating this appeal.

I then sent a Notice of Inquiry to the Town and the affected person, enclosing the appellant's representations in their entirety and inviting the Town and affected person to provide representations. Both the Town and the affected person responded with representations. I then sent the Town's and affected person's representations to the appellant and invited reply representations, which the appellant provided. Again, the appellant provided brief representations and indicated that it relies on its reply representations in the previous appeal, which it enclosed. These representations were provided to the Town and the affected person, who were invited to provide sur-reply representations. Neither the Town nor the affected person provided sur-reply representations.

RECORDS:

The record at issue consists of the "comment" portion of the sign-in form in relation to the public meeting referred to above.

DISCUSSION:

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,
>
> (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].

In order to find that information in a record qualifies as personal information, it must also be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The appellant's initial representations in this appeal do not specifically address the issue of whether the record contains personal information except by repeating its submissions on this issue in the previous appeal, and observing that the issue of confidentiality (paragraph (h) of the definition) is not present here because unlike the letter that was at issue in the previous appeal, the sign-in form, was not marked "private and confidential". The appellant also submits that, based on statements at page 7 and 8 of the minutes of the public meeting, which were provided with its letter of appeal, "representations and information supplied at the meeting are considered public information, and not personal information."

The appellant's submissions in the previous appeal were to the effect that the information at issue does not contain "personal information" about the affected person, but rather her personal views or opinions about other individuals or groups of individuals, namely its employees and consultants, thereby qualifying as the personal information of these individuals under paragraph (g) of the definition.

The affected person submits that the information at issue sets out her personal opinions and concerns about the development and not her views about the appellant and thus constitutes her personal information pursuant to paragraph (e) of the definition of "personal information" in section 2(1).

I have reviewed the sign-in form. The severed portion sets out the affected person's views concerning the development and the proposed changes to the Town's official plan. It contains no comments about the developer, its employees or its consultants. In my view, this falls directly within paragraph (e) of the definition and qualifies as the affected person's personal information.

Information about the developer, which is a corporation and not an individual, could not qualify as personal information in any event. As there are no comments about its employees or consultants, paragraph (g) of the definition does not apply. I find that the record contains the personal information of the affected person only.

With respect to the appellant's comments about confidentiality in relation to representations and information provided at the meeting being public information, while I agree that paragraph (h) of the definition, dealing with confidential correspondence, does not apply, I do not agree that the statements on page 7 and 8 of the meeting minutes have the effect suggested by the appellant. The relevant passage on page 7 of the minutes states:

> Please note that by providing your name and address, you acknowledge that *personal information* is collected pursuant to the Municipal Freedom of Information and Protection of Privacy Act and will be used for the purpose of your request to express your comments, to be notified of future meetings and is considered public information. [Emphasis added.]

The statement by the Mayor recorded on page 8 of the minutes is to the same effect. In my view, although I will address these comments further in my discussion of the personal privacy

exemption, below, the statement clearly contemplates that the information collected is, in fact, personal information.

Before leaving this subject it is necessary to address one further submission of the appellant in its representations in the previous appeal, referring to Order P-358. That order dealt with records setting out the requester's opposition to a proposed land exchange because it would interfere with his right of access to his own property. The adjudicator found that this was information about a property, and not of a personal nature. In my view, this is quite different than the record in the present case. The information at issue here consists of the affected person's views about a matter of public importance that was being considered by the Town council, which in my view is recorded information about an identifiable individual that *is* of a personal nature. In any event, the doctrine of *stare decisis* does not apply to decisions of this office [see *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] S.C.J. No. 75, p. 27, para. 94, and *Hopedale Developments Ltd. v. Oakville (Town)* (1964), 47 D.L.R. (2d) 482 (Ont. C.A.)]. If my decision on this issue conflicts in any way with Order P-358, I decline to follow that decision in the circumstances of this appeal, and in that regard, I rely on the reasoning outlined above.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, the mandatory section 14(1) exemption prohibits an institution from releasing this information unless one of the exceptions to the exemption found in paragraphs (a) to (f) of section 14(1) applies.

The appellant argues that the exceptions to the exemption in sections 14(1)(c), (d) and (f) apply.

These sections 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.

Sections 14(1)(c) and 14(1)(d)

The appellant maintains that the land use planning system in Ontario is designed to encourage and facilitate public participation in the planning process and to provide a full public record. The appellant submits that the affected person's written comments were "collected and maintained specifically for the purpose of creating a record available to the general public," as contemplated by section 14(1)(c) of the *Act*. The appellant also submits that the *Planning Act* expressly authorizes the disclosure of the information at issue and, as a result, section 14(1)(d) of the *Act* applies.

The appellant's submissions concerning these two exceptions to the mandatory section 14(1) exemption focus on several discrete requirements of the *Planning Act* for disclosure of information to the public, to approval authorities and to the OMB.

Section 17 deals with the official plan. It states, in part:

> (15) In the course of the preparation of a plan, the council shall ensure that,
>
> > (b) adequate information, including a copy of the current proposed plan, is made available to the public;
>
> (21) The council shall provide to any person or public body that the council considers may have an interest in the plan adequate information, including a copy of the plan and, before adopting the plan, shall give them an opportunity to submit comments on it up to the time specified by the council.
>
> (29) If a notice of appeal under subsection (24) is filed, the clerk of the municipality shall ensure that,
>
> > (a) a record is compiled which includes the prescribed information and material;
> >
> > (b) the record, the notice of appeal and the fee prescribed under the Ontario Municipal Board Act are forwarded to the Municipal Board within 15 days after the last day for filing a notice of appeal;
>
> (31) If the plan is not exempt from approval, the council shall cause to be compiled and forwarded to the approval authority, not later than 15 days after the day the plan was adopted, a record which shall include the prescribed information and material …
>
> (42) If an approval authority receives a notice of appeal under subsection (36) or (40), it shall ensure that,

> (a) a record is compiled which includes the prescribed information and material;
>
> (b) the record, notice of appeal and the fee prescribed under the Ontario Municipal Board Act are forwarded to the Municipal Board …

Section 22 deals with amendments to the official plan, and is therefore of particular relevance in this case. It states, in part:

> (1) If a person or public body requests a council to amend its official plan, the council shall,
>
> (a) forward a copy of the request and the information and material required under subsection (4) to the appropriate approval authority, whether or not the requested amendment is exempt from approval; and
>
> (b) hold a public meeting under subsection 17(15) or comply with the alternative measures set out in the official plan.
>
> (4) A person or public body that requests an amendment to the official plan of a municipality or planning board shall provide the prescribed information and material to the council or planning board.

With respect to the meaning of "prescribed information" in these provisions, the appellant's submission in the previous appeal provide the following helpful summary:

> In all cases, the "prescribed information" to be included within a "record" to be compiled and forwarded to either the approval authority or the [OMB], as the case may be, shall include "the original or a copy of all written submissions and comments and when they were received" (see O. Reg. 198/96, sections 5.4, 6(1)3, 8.5, and 10.3).

I note that O. Reg. 198/96 has been replaced by O. Reg. 543/06, and the equivalents of the sections cited by the appellant are found at sections 6.4, 7.4, 9.6 and 13.4 of the new regulation. The provisions are not substantively altered. For ease of reference, I will refer to the new regulation and section numbering in this order.

Section 34 deals with the passage of zoning by-laws by municipalities, and contains similar provisions. It states, in part:

> (12) Before passing a by-law under this section, … the council shall ensure that sufficient information is made available to enable the public to understand

> generally the zoning proposal that is being considered by the council and, for this purpose, shall hold at least one public meeting, notice of which shall be given in the manner and to the persons and public bodies prescribed.
>
> (19) Any person or public body may, not later than 20 days after the day that the giving of written notice as required by subsection (18) is completed, appeal to the Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the by-law and the reasons in support of the objection….
>
> (23) The clerk of a municipality who receives a notice of appeal under subsection (19) shall ensure that,
>
> (a) a record is compiled which includes,
>
> (iii) the original or true copy of all written submissions and material in support of the submissions received in respect of the by-law before the passing of it;
>
> (b) the notice of appeal, record and fee are forwarded to the Municipal Board within 15 days after the last day for filing a notice of appeal under subsection (19)….

The affected person submits that the sections of the *Planning Act* relied on by the appellant has to do with the creation of a record of materials which would be made available to the OMB if the decision of the municipal council is appealed. The affected person argues that this record is not maintained as a public record in the traditional sense where it is accessible to the public at large.

In its reply representations in the current appeal, the appellant refers to section 71 of the *Planning Act*, which provides that in the event of a conflict with other legislation, the provisions of the *Planning Act* prevail:

> At issue … is whether the provisions of the *Planning Act* which mandate openness, transparency and public accessibility, prevail over the reasoning of the [affected person]. The appellant submits that they do, particularly in light of section 71 of the *Planning Act*.

The appellant goes on to submit that the affected person's interpretation of the *Act* would have the result that

> … participants in the public approval process under the *Planning Act* can pervert that public process by claiming that they are only expressing their personal views or opinions. In other words, an interested party … can make submissions to the

> municipal decision-maker in secret without affording the person affected by those submissions an opportunity to respond. This cannot be the case.

Section 14(1)(c)

For section 14(1)(c) to apply, the information must have been "collected and maintained specifically for the purpose of creating a record available to the general public." The identical provision at section 21(1)(c) of the *Freedom of Information and Protection of Privacy Act* has been found to be applicable where, for example, a person files a form with an institution as required by a statute, and where that statute provides any member of the public with an express right of access to the form (Order P-318, regarding a Form 1 under the *Corporations Information Act*).

In my view, in assessing the appellant's submissions about the "public approval process" under the *Planning Act*, and the impact this may have under section 14(1)(c), it is necessary to distinguish between two different sets of provisions in the sections of the *Planning Act* referred to by the appellant, and outlined or reproduced above. One group of provisions does, in fact, mandate the provision of information to the public, namely, the requirement in sections 17(15)(b), 17(21) and 34(12) of the *Planning Act* to provide adequate information about the proposed development to the public and/or interested parties. The other provisions, as the affected person submits, relate to "prescribed information" that must be provided to either an approval authority or the OMB. Only the latter category includes "written submissions and comments".

In my view, the question of whether the very brief comment of the affected person in the sign-in form would actually qualify as a written submission or comment for this purpose cannot easily be answered on the evidence before me. Even if it does, the requirement to provide it to the approval authority or the OMB under the *Planning Act* does not establish that it is "collected and maintained specifically for the purpose of creating a record available to the general public" as required under section 14(1)(c).

As well, the notations at pages 7 and 8 of the public meeting minutes about information being considered "public" (referenced above), which specifically mention the name and address of proposed speakers at the meeting, are not sufficient to indicate that the sign-in sheets would be made available to any member of the public who asked for them. This view is supported by the statement that the information collected "will be used for the purpose of your request to express your comments, to be notified of future meetings…." In my view, this is not sufficient to support a finding that the sign-in sheet was collected or maintained specifically for the purpose of creating a record available to the general public as required by section 17(1)(c).

With respect to the particular facts of this case, although I agree with the appellant that the land use planning system in Ontario seeks to encourage openness and facilitate public participation, this is not evidence that the Town collected the information at issue in this appeal specifically for the purpose of creating a record available to the general public.

In addition, while a particular municipality, authority or the OMB itself may make these materials available to members of the public, as referred to by the appellant in its representations, I am not satisfied, on the evidence, that such practices would indicate that the sign-in sheet was collected and maintained by the Town for this purpose.

I find that section 14(1)(c) does not apply.

Section 14(1)(d)

As noted, section 14(1)(d) provides for disclosure "under an Act of Ontario or Canada that expressly authorizes the disclosure". As explained in Order PO-1993, this wording closely mirrors the phrase "expressly authorized by statute" in section 28(2) of the *Act*. Section 28(2) is the equivalent of section 38(2) of the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*). This office has stated the following with respect to the latter phrase in section 38(2) of the provincial *Act*:

> The phrase "expressly authorized by statute" in subsection 38(2) of the *Act* requires either that specific types of personal information be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute i.e, in a form or in the text of the regulation [Compliance Investigation Report I90-29P].

With respect to the content of "prescribed information", I note that the relevant sections of the *Planning Act* and Ontario Regulation 543/06 do not expressly authorize the disclosure of written comments that contain *personal information*. Instead, section 9 of Ontario Regulation 543/06 provides that upon receipt of a notice of appeal, a record shall be compiled and forwarded to the OMB and it shall include the original or copy of all written submissions and comments received.

More importantly, the analysis of the potential application of section 14(1)(c), above, is equally applicable here. Even if the affected person's comments in the sign-in sheet qualify as "written submissions or comments", the only disclosure of this type of information mandated under the *Planning Act* or O. Reg. 543/06 is to the approval authority or the OMB. In *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)*, (2004), 71 O.R. (3d) 303 at 311, the Divisional Court found that the authority for the Municipal Property Assessment Corporation to disclose assessment roll information in electronic form to the clerk of a municipality does not authorize disclosure to any other person or to the public generally. On this basis, I conclude that in the circumstances of this case, the authority of one government body to disclose information to another government body does not also authorize disclosure to the appellant.

On the issue of section 71 of the *Planning Act* and potential conflict with the *Act*, I find that no such conflict exists. On the basis of the foregoing analysis, the Town may carry out its duties to

disclose information to the County or the OMB under the *Planning Act*, which moreover does not authorize or require disclosure of "prescribed information" to the appellant.

Accordingly, I find that the *Planning Act* and O. Reg 543/06 do not "expressly authorize" disclosure to the appellant and I have therefore concluded that section 14(1)(d) of the *Act* does not apply.

Section 14(1)(f)

As noted, this section provides an exception to the mandatory section 14(1) exemption "if the 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 personal privacy under section 14(1)(f).

If section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. In my view, section 14(4) (which, at the time of the request and the filing of this appeal, dealt with incidents of employment and contracts for personal services) does not apply.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Neither the Town nor the affected person claim that any of the presumptions listed in section 14(3) apply to the information at issue. I have reviewed these provisions in relation to the information at issue and I find that they do not apply.

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 circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

In order to determine whether I should make a finding that disclosure of the information at issue would not constitute an unjustified invasion of privacy, thus invoking the section 14(1)(f) exception to the exemption, I must examine the factors listed in section 14(2), as well as any other relevant considerations, and balance those favouring privacy protection against those favouring disclosure.

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

The affected person's representative suggests that the factor favouring non-disclosure at section 14(2)(h) applies in this appeal.

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;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;

As noted above, the appellant submitted representations in MO-1936 and indicated that it also relies on them for the purposes of this appeal. Adjudicator Hale summarized the appellant's arguments regarding the application of sections 14(2)(a) and 14(2)(d) in Order MO-1936, as follows:

> 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* [sic] requires that, when the good character, propriety of conduct or competence of a person is an issue in a proceeding, the person is entitled to be furnished with reasonable information of any such allegations *prior to the hearing*. [Emphasis in Order MO-1936.]

The appellant makes a number of other arguments that raise potentially relevant circumstances to be considered, which the appellant contends are in support of its view that disclosure of the "comment" portion of the sign-in sheet would not be an unjustified invasion of personal privacy. These arguments are set out and analyzed below.

The affected person submits that the sign-in form is not required for public scrutiny since council has already approved the proposed amendments, and on this basis, section 14(2)(a) does not apply. The affected person also submits that the factor at section 14(2)(d) does not apply because disclosure of the information at issue is not required for the fair determination of the appellant's rights. The affected person also challenges the appellant's position that the civil rules of procedure, *Statutory Powers Procedure Act* and the disclosure regime under the *Planning Act* support a finding that the factor listed at section 14(2)(d) applies in the circumstances of this appeal.

As well, the affected person also argues that a private individual has a right to "… make his or her personal opinions known to the municipality without risk of disclosure of same and such information is to be treated as personal information" thus raising the application of the factor listed at section 14(2)(h) of the *Act*.

In a submission that could be seen as relating to section 14(2)(h), the appellant's reply representations argue that the affected person had no expectation of privacy with respect to the information at issue in that appeal because her own representations submitted to this office concede that she elaborated and expanded on her written comments at the public meeting. The appellant thus argues that the affected person has already disclosed her views and opinions, and cannot now claim that they are private.

Section 14(2)(a)

In Order MO-1939, Adjudicator Hale found that the factor in section 14(2)(a) was relevant in relation to the record at issue in that case, which was a detailed letter setting out the affected person's concerns about the proposed development. Even in that case, he accorded this factor

little weight and went on to find that disclosure of the letter would be an unjustified invasion of privacy based on the weight he accorded to the affected person's privacy interests.

In my view, this appeal requires a different conclusion concerning section 14(2)(a) because of the very different nature of the record before me. The affected person's remarks in the "comment" portion of the sign-in sheet are cursory, to say the least, and do not elaborate on the issues in any way. In my view, having reviewed the record, the remarks contain very little substance and are far too general to have any bearing on the question of whether the necessary approvals would be granted.

Therefore, having reviewed the record and the representations provided to me, including those relating to the previous appeal, I find that the portion at issue has no bearing on public scrutiny of the Town. This is sufficient to deal with the question, but even if the comments could contribute in any way to public scrutiny of the Town's decision to pass the official plan and zoning amendments requested by the appellant, I note that the decision has already been made by the Town and is now to be dealt with by the OMB and/or the County of Simcoe. More significantly, there is evidence before me to support a conclusion that the appellant's purpose in seeking access to the comment section is *not* to subject the Town's decision to public scrutiny; rather, as noted in its representations, the appellant seeks the record in order to respond to comments or allegations against it by the affected person that it expects to find there. In essence, this is a private interest, not a public one.

I find that section 14(2)(a) does not apply.

Section 14(2)(d)

For section 14(2)(d) to 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 MO-1936, Adjudicator Hale also considered section 14(2)(d) of the *Act* and found that it did not apply to the letter at issue in that appeal. In MO-1936, Adjudicator Hale states:

> 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.

The legal right claimed by the appellant in this appeal is the same as the one referred to in Order MO-1936. I agree with Adjudicator Hale and find that the appellant has established a legal right which relates to the further approvals required in relation to the zoning and official plan changes.

However, as noted in my discussion of section 14(2)(a), the comment in the sign-in sheet is far more cursory than the record at issue in Order MO-1939, and does not elaborate on the issues in any way. Again, the comments are far too general to have any real bearing on the question of whether the necessary approvals would be granted, and could not possibly be considered "significant" by the approving authority or the OMB. I find that the third requirement under section 14(2)(a) is not met for this reason. For this same reason, I also find that the comments in the sign-in sheet could not reasonably be found to be "required in order to prepare for the proceeding or to ensure an impartial hearing", and the fourth requirement is not met.

There are additional reasons for finding the fourth requirement under section 14(2)(a) is not met. There is, in fact, no evidence before me to suggest that the record has even been produced to the

OMB or the County of Simcoe in relation to the approvals process, nor that the appellant has sought this record through the OMB or the County in the context of the *Planning Act* process, pursuant to those bodies' procedural mechanisms.

Because all four requirements must be met, I find that the application of section 14(2)(d) is not established.

Other Potentially Relevant Circumstances

The representations of the parties also refer to several matters which could arguably be considered "relevant circumstances" under section 14(2). In particular, the appellant's representations refer extensively to its right to know what allegations have been made against it, on the basis of fairness. As noted above, the comments in the record contain very little substance and in my view, it is not realistic to describe them as "allegations". As well, unlike the situation in Privacy Investigation Report I94-064P cited by the appellant, the affected person has not made a formal complaint against the appellant with any regulatory body. Nor has she instigated litigation. In my view, in the circumstances of this appeal, the appellant's contention that basic fairness requires the disclosure of the comment section of the sign-in sheet is without merit.

In a related argument, referred to above, the appellant raises section 8 of the *Statutory Powers Procedure Act*, which applies "[w]here the good character, propriety of conduct or competence of a party *is an issue in a proceeding*" (my emphasis), and requires prior disclosure of any such allegation. The appellant also refers to the common law principle from which this section arises. In my view, the contents of the record cannot realistically be construed as containing any such allegation, as it comments on the development rather than on the appellant or any other person. Also, as stated above, there is no evidence before me that the sign-in sheet has been provided to the OMB or any other entity in relation to any proceeding or process that could affect the appellant's interests.

As already discussed, the appellant also argues that the statements at pages 7 and 8 of the minutes of the public meeting relating to the collection of the affected person's name and address, referred to above, mean that the sign-in form is public information. In the analysis of section 14(1)(c) above, I found that these statements are not sufficient to indicate that the sign-in sheets would be made available to any member of the public who asked for them. The sign-in sheet itself clearly fails to advise that this would be the case. In my view, it is not accurate to describe the sign-in form as a public document, nor one that would necessarily be disclosed upon request (as, indeed, it was not in this case, which resulted in a request under the *Act* and, ultimately, this appeal). I am not satisfied that the statements in the public meeting minutes cited by the appellant are a "circumstance" favouring disclosure of the comment portion of the record.

In a similar argument based on the fact that after completing the sign-in sheet, the affected person went on to publicly discuss (and even to "expand on") her views at the meeting, the appellant contends that she has no privacy interest in the comments portion of the sign-in sheet. I disagree. In Order M-350, former Commissioner Tom Wright was dealing with information

derived from the same type of record as the one before me, namely a sign-in sheet at a public meeting. He found that the fact that it was a public meeting did not mean that an individual had no interest in limiting further disclosure or dissemination of his/her personal information, and that the public nature of the meeting was not a circumstance weighing in favour of disclosure.

Similarly, in Order M-68, former Assistant Commissioner Tom Mitchinson found that although existence of a particular criminal conviction is a matter of public record, and would have been disclosed to the public during a trial or plea taken in open court, it does not necessarily follow that this information should be freely and routinely available to anyone who asks. Former Commissioner Wright also reached this conclusion about the names of lottery winners in Order 180. Similar considerations apply here, and in my view, the affected person was entitled to decide she wanted to protect her privacy concerning the sign-in sheet, as she has clearly done. I find that the fact that the affected person made comments at the public meeting is not a factor favouring disclosure of the information in the part of the sign-in sheet sought by the appellant in the circumstances of this case.

The appellant also attempts to analogize the sign-in sheet with a petition and cites Order P-171. In that order, Adjudicator John D. McCamus found that "[p]etitions are not documents that have an aura of confidentiality" and ordered the names of the signatories disclosed. In this case, the affected person's name has already been provided to the appellant, and the affected person's opposition to the proposed development, which is all that would be revealed by disclosing her name if she had, for example, signed a petition, is already known. In my view, this is not a compelling analogy and provides no basis for concluding that disclosure of the comment portion of the sign-in sheet would not be an unjustified invasion of personal privacy.

The representations of the affected person and the appellant also refer to litigation in which the appellant is the plaintiff in an action against a local association because of comments it made concerning the development proposal. The affected person describes this litigation as vexatious, and alleges that it constitutes "harassment", and implies that disclosure of the comment portion of the record could produce similar results. I am not satisfied, on the evidence, that this action is a relevant circumstance in relation to this appeal, but in any event, it is not necessary for me to make this finding in the circumstances of this case, nor to rule on any of the other factors cited by the affected person as favouring non-disclosure, because in my view the evidence does not support a conclusion that the section 14(1)(f) exception to the exemption applies. I have already found that the section 14(1)(c) and (d) exceptions do not apply. If no exception is established under section 14(1), the information is exempt.

Under section 14(1)(f), I must be satisfied that disclosure *would not* constitute an unjustified invasion of personal privacy before finding that this exception applies. In this regard, it is important to distinguish the discretionary exemption at section 38(b) of the *Act* (the relevant exemption where a requester seeks access to his or her own personal information) from the section 14(1) exemption at issue here. Section 38(b) only applies where it is established that disclosure *would be* an unjustified invasion of personal privacy.

By contrast, in section 14(1) (the relevant exemption where, as here, a requester seeks access to *another individual's* personal information), the wording of section 14(1)(f) means that the application of this exception to the exemption can only flow from a finding that disclosure *would not constitute* an unjustified invasion of personal privacy. Such a finding requires that factors or circumstances favouring disclosure are present. I have found, above, that none of the factors and circumstances advanced by the appellant as favouring disclosure are established. Section 14(1)(f) therefore does not apply, and it is not necessary to review factors or circumstances favouring non-disclosure in the circumstances of this case.

I find that the exceptions to the mandatory section 14(1) exemption are not established in this case, and the comment section of the sign-in sheet is therefore exempt from disclosure under section 14(1) of the *Act*.

PUBLIC INTEREST IN DISCLOSURE

The appellant also raises the application of section 16, the public interest override. This section states:

> 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].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984]. Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

Adjudicator Hale addressed this situation in Order MO-1936, in relation to a similar record as in this appeal, and in the exact same factual circumstances. He stated:

> 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 agree, and in my view, these comments are equally applicable here. As well, even if the interest were of a more public nature, I would not find that there is any compelling public interest in the disclosure of the brief comments in the portion of the record that is at issue, given its cursory nature, as discussed above. Disclosing this record would do nothing to advance meaningful public debate or understanding of the issues in any way that would justify the application of section 16. I therefore find that no public interest in disclosure is established and it is therefore not necessary to consider wither it outweighs the purpose of the section 14(1) exemption. Taking into consideration the fact the affected person elaborated and expanded on her written comments at the public meeting and the appellant was in attendance at the meeting and had an opportunity to make notes, I cannot find that disclosure of the information at issue would shed further light on government operations. Accordingly, I find that section 16 does not apply in this case.

COSTS

In her representations, the affected person seeks her costs in relation to this appeal. The *Act* does not expressly empower me to grant an award of costs, and the appellant advances no other basis for me to do so. In Orders P-604 and P-724, former Assistant Commissioner Irwin Glasberg found that the Commissioner does not have the power to award costs under the provincial *Freedom of Information and Protection of Privacy Act*. I see no reason to reach a different conclusion under the *Act*, which is in every sense a parallel scheme with very similar provisions. Even if I had such a power, I would not exercise it here, as in my view proceedings under the *Act* should not usually carry this consequence and this case provides no basis for departing from that approach. The *Act* contemplates an inexpensive process for conducting appeals, which the Commissioner is empowered to resolve by conducting inquiries. This office has issued more than 4,000 orders and costs have never been awarded.

ORDER:

1. I uphold the Town's decision to not disclose the information at issue.

Original signed by: January 19, 2007
John Higgins
Senior Adjudicator