



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER PO-2600-F

Appeal PA-050170-1

Ministry of Natural Resources



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Natural Resources (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of any letters received by the Ministry respecting the construction of the requester's boathouse. On May 18, 2007, Adjudicator Beverley Caddigan issued Interim Order PO-2578-I which addressed some, but not all of the outstanding issues in this appeal. The order specifically addressed the question of whether the responsive records contained the personal information of the appellant within the definition of that term contained in section 2(1) of the *Act* and, accordingly, whether section 49(b) of the *Act* applied to that information. In the decision, Adjudicator Caddigan made the following findings with respect to this issue:

The Ministry did not provide representations on its exercise of discretion with respect to section 49(b) of the *Act* because it was of the view that the records at issue do not contain the appellant's personal information and were therefore exempt under the mandatory personal privacy exemption found at section 21(1). However, based on my findings that the records contain the personal information of both the appellant and other identifiable individuals, the Ministry's position was erroneous and the relevant personal privacy exemption is section 49(b), which is a discretionary exemption. As the Ministry has not exercised discretion in this regard, I have decided to return this matter to the Ministry in order for it to exercise its discretion under section 49(b) regarding the disclosure of the personal information contained in the record.

Accordingly, Order Provisions 2 and 3 of Order PO-2578-I stated:

2. I order the Ministry to exercise its discretion under section 49(b) taking into account relevant considerations. I order the Ministry to provide me with representations on its exercise of discretion no later than **June 11, 2007**.
3. I will defer my final decision with respect to disclosure of the personal information in the record at issue pending my review of the Ministry's exercise of discretion as required by Provision 2.

In accordance with the requirements of Order Provision 2, the Ministry provided this office with representations respecting the manner in which it exercised its discretion not to disclose certain portions of the records.

DISCUSSION:

EXERCISE OF DISCRETION

An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so. In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose

- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

In relation to its exercise of discretion, the Ministry submits:

. . . the information at issue is highly sensitive and its disclosure would constitute an unjustified invasion of privacy of the affected parties. Given that the protection of privacy is one of the primary purposes of the Act, and that there was no compelling public interest, no issue of individual or public health or safety or other reason which would justify deviating from one of the primary purposes from the Act, the Ministry exercised its discretion to withhold the records at issue.

I have carefully reviewed the Ministry's representations and considered the exercise of its discretion to withhold the information on the basis of section 49(b) in the overall context of this appeal. Based on the information provided by the Ministry, I am satisfied that it considered relevant factors (including personal privacy) in deciding to exercise its discretion not to disclose the record at issue, and did not consider irrelevant ones. Its exercise of discretion was therefore proper.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Donald Hale
Adjudicator

July 31, 2007 _____