



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2770

Appeal PA07-352

Ministry of the Environment



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NATURE OF THE APPEAL:

Background

In 2004, the Ministry of the Environment (the Ministry) determined that an industrial property in Cambridge, Ontario was the source of trichloroethylene (TCE) contamination. TCE is a manufactured liquid chemical that is used to degrease metal. It has the potential to cause adverse health effects in humans.

In 2006, the Ministry identified another industrial property as a potential second source of TCE contamination in the same area. It decided to determine whether any businesses that had formerly occupied this second industrial property had used TCE in their operations. In conducting its investigation, the Ministry interviewed seven individuals who were former employees of a company that previously had operations at this property.

Access request

The Ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the second industrial property, including all witness statements (interview summaries) compiled by the Ministry concerning this property. The requester is a large corporation that bought the company that previously had operations at this property. It is working with other parties to address the TCE contamination.

The requester subsequently asked that access to the interview summaries be considered separately from any other records responsive to its request. The Ministry located seven interview summaries. It then issued a decision letter that provided the requester with full access to one interview summary (Record 2). It provided partial access to another interview summary (Record 1) and denied access to five interview summaries (Records 3 to 7) in their entirety pursuant to the mandatory exemption in section 21(1) (personal privacy) of the *Act*, read in conjunction with the presumptions in sections 21(3)(b) (investigation into violation of law) and 21(3)(d) (employment or educational history).

The requester (now the appellant) appealed the Ministry's decision to this office. During the mediation stage of the appeal process, the Ministry informed the mediator that the provincial officers who conducted the interviews asked these individuals whether they would consent to the disclosure of their statements to other parties. None of the individuals whose interview summaries have been withheld in full consented to the disclosure of these records.

This appeal was not resolved in mediation and was transferred to the adjudication stage of the appeal process for an inquiry. I started my inquiry by sending a Notice of Inquiry, setting out the facts and issues in this appeal, to the Ministry, which submitted representations in response. In its representations, the Ministry states that with respect to the personal privacy exemption in section 21(1) of the *Act*, it is no longer relying on the presumption in section 21(3)(b) but is continuing to rely on the presumption in section 21(3)(d).

I then sent a Notice of Inquiry to the appellant, along with a severed copy of the Ministry's representations. Portions of the Ministry's representations were severed because they fall within this office's confidentiality criteria for sharing representations. In response, the appellant

submitted representations to this office. In its representations, the appellant states that it does not object to the Ministry's decision to sever portions of Record 1. Consequently, that record is no longer at issue in this appeal.

Finally, I sent the appellant's representations to the Ministry and invited it to submit reply representations. In response, the Ministry submitted representations by way of reply.

RECORDS:

The five records remaining at issue are summarized in the following chart, which is based on an index of records submitted by the Ministry:

Record number	Description of record	Ministry's decision	Exemption claimed
3 (pages 7-8)	Interview with former employee of company, conducted April 25, 2007.	Withheld in full	Section 21(1)
4 (pages 9-10)	Interview with former employee of company, conducted April 25, 2007.	Withheld in full	Section 21(1)
5 (pages 11-13)	Interview with former employee of company, conducted April 27, 2007.	Withheld in full	Section 21(1)
6 (pages 14-16)	Interview with former employee of company, conducted April 27, 2007.	Withheld in full	Section 21(1)
7 (pages 17-19)	Interview with former employee of company, conducted April 27, 2007.	Withheld in full	Section 21(1)

DISCUSSION:

PERSONAL INFORMATION

General principles

The Ministry claims that the personal privacy exemption in section 21(1) of the *Act* applies to the information in the records at issue. The section 21(1) exemption only applies to information that qualifies as “personal information,” as that term is defined in section 2(1) of the *Act*. Consequently, the first issue that must be considered is whether the records at issue contain “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;

To qualify as personal information, it must 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 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].

Sections 2(3) and 2(4) of the *Act* explicitly exclude certain information from the definition of “personal information” in section 2(1). These provisions state:

- (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
- (4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

Summary of the parties’ representations

The records at issue are five summaries of interviews with former employees of a company that previously had operations at the property identified by the requester. The information in each interview summary includes the name of the former employee who was interviewed, when that individual worked at the property, his or her job title or responsibilities at that time, and each individual’s recollection of the equipment and chemicals used at the property.

The Ministry submits that the information in these records constitutes the “personal information” of these former employees:

In section 2(1) of the *Act*, “personal information” includes “information relating to ... the employment history of the individual ...”

The individuals were selected by the Ministry to be interviewed solely because they are former directors and employees of defunct companies that once occupied [the named property].

The information severed from the records by the Ministry comprised the names of former employers, former job positions, dates of former employment, former work duties and personal workplace recollections provided by individuals who were once employees at [the named property].

As such, the records inherently consist of the employment histories of individuals, and therefore, “about” the individuals.

Further, the information in Records #3-7 was offered voluntarily by the former employees to aid the Ministry in investigating possible sources of contamination at [the named property]; the individuals were not acting in a current professional, official or business capacity when they provided the information.

In its representations, the appellant states that it would be satisfied if the Ministry simply severed the names and other identifiable information relating to the five former employees but disclosed the remaining information in each interview summary:

... At the very least, [we are] entitled to copies of the records after appropriate severance ...

To be clear ... we have simply asked [the Ministry] to share with us the generic substance of the information provided in statements by [the company's] former employees (i.e., when and where TCE was reportedly used by [the company] at the property) ... We had not asked for the names of [the company's] former employees or any other personal information (and assumed that [the Ministry] would redact such information in the requested records).

The Ministry submits that it is not possible to sever the records in the manner suggested by the appellant:

In the process of making its decision to withhold Records #3-7, the Ministry initially attempted to sever only details that would render the individuals “identifiable”, in the interests of releasing as much information as possible without violating privacy.

Upon reviewing the records, the Ministry came to believe that large amounts of information provided by the individuals, such as the years they worked at [the named property], which shifts they worked their duties, workplace observations and opinions, and other information provided in each statement, could allow an assiduous inquirer to identify the individuals.

Because the Ministry could not determine precisely which pieces of information, or combination of information, provided by each individual would render him or her “identifiable”, attempts to sever information left the greater part of each interview redacted, leaving only disconnected snippets.

Order PO-2612 states: “A head will not be required to sever the record and disclose portions where to do so would only reveal “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information.”

The appellant disputes the Ministry’s submission that it is not possible to sever the records in a manner that facilitates disclosure and, it urges this office to carefully scrutinize the records:

Without the entire record before us, obviously, it is impossible to judge whether it is the case that when the “personal information” was severed by [the Ministry], all that remained was “disconnected snippets”. We request the Commissioner to take the approach consistent with the stated principles of the *Act*, including the principles that information should be available to the public and exemptions from the right of access should be limited and specific (section 1(a)).

Analysis and findings

I have carefully considered the parties’ representations. I acknowledge that the Ministry has proceeded cautiously, because it believes that the records at issue contain personal information. In my view, however, it is possible to sever the records at issue in a manner that provides the appellant with access to the information that it is seeking regarding potential TCE use at the property, while not disclosing any information that would identify the individuals who provided the information found in the interview summaries.

As noted above, the appellant has stated that it would be satisfied if the Ministry severed the names and other identifiable information relating to five former employees but disclosed the remaining information in each interview summary. Consequently, I will consider the following information in each interview summary to be non-responsive to the appellant’s request and therefore removed from the scope of this inquiry: the name of the former employee who was interviewed, when that individual worked at the property, and his or her job title or responsibilities at that time.

The information that remains at issue in each interview summary is generally each individual’s recollection of the equipment and chemicals used at the property. In my view, this remaining information is about a property, not an identifiable individual. As such, it does not constitute “personal information,” as that term is defined in section 2(1) of the *Act*. As noted above, the personal privacy exemption in section 21(1) of the *Act* only applies to “personal information.” Given that this remaining information about the property is not “personal information,” I find that it cannot qualify for exemption under section 21(1) and must therefore be disclosed to the appellant.

As noted above, both parties have made submissions as to whether the records can be severed in a manner that facilitates disclosure. Section 10(2) of the *Act* requires an institution to disclose as much of a record as is reasonably possible without disclosing information that is exempt. This provision states:

If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

In this case, I have not found that any information in the records at issue is exempt from disclosure. Instead, I have found that the names and other identifiable information relating to the five employees that appears in the records are *non-responsive* to the appellant's request. Consequently, section 10(2), which requires an institution to disclose as much information as possible without disclosing exempt information, is not applicable in the circumstances of this appeal.

However, even if I was to assume that the non-responsive information qualifies as "personal information" and is exempt from disclosure under the personal privacy exemption in section 21(1) of the *Act*, I am not persuaded by the Ministry's submission that the records at issue cannot be reasonably severed. I have carefully reviewed the interview reports and find that it is possible to sever these records in a manner that provides the appellant with substantial amounts of coherent information that is responsive to its request (i.e., information about the equipment and chemicals used at the property), but that does not reveal the identity of any of the individuals who were interviewed.

ORDER:

1. I order the Ministry to disclose the information in the records at issue that I have found is not "personal information" and therefore not exempt under section 21(1) of the *Act*.
2. I have provided the Ministry with a copy of the records and have highlighted in green those portions that must not be disclosed to the appellant because they are not responsive to its request. To be clear, the non-highlighted portions of the records must be disclosed to the appellant.
3. I order the Ministry to disclose the records to the appellant by **April 29, 2009** but not before **April 24, 2009**.

4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records that it discloses to the appellant.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ March 25, 2009