



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

ORDER PO-2900

Appeal PA08-350

Ministry of the Environment



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NATURE OF THE APPEAL:

The Ministry of the Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to computer print outs and water well logs for all wells drilled in Prince Township, District of Algoma from May 19, 1998 to June 2008. The request also specified six particular wells in the District of Algoma, St. Joseph Township.

The request was subsequently clarified and narrowed to the following: “A computer print out of all wells drilled in Prince Township, in the District of Algoma, from April 1, 2007 to September 30, 2007, including the names of the owners of the properties on which the wells were drilled.”

The geographic scope of the request was later expanded in order to produce a more comprehensive package of responsive records. The Ministry agreed to process a final revised request for: “select wells – 10 well records from Algoma, Cochrane, Kenora, Thunder Bay, Sudbury, Rainy River and Timiskaming Districts containing both corporate and personal well owners and a well print out report.”

In response to the expanded request, the Ministry issued a decision which read, in part, as follows:

After a review of the records received from the Ministry’s Environmental Monitoring and Reporting Branch, the final decision has been made to provide partial access to the attached information as names, mailing addresses (other than where the well was constructed) and home telephone numbers have been removed to protect personal privacy (section 21(1)(f) of the *Act*). It is the Ministry’s position, that disclosing the personal information without the consent of the individuals is not justified.

Attached to the Ministry’s decision were severed copies of 70 separate forms under the *Ontario Water Resources Act* entitled “Water Well Record”. Severed copies of these records, which include information about the water wells (including certain location descriptions), were disclosed to the appellant. In circumstances where the owner of the well is identified as a corporate body, the records were disclosed in full. However, in circumstances where the owner of the well is an individual, the name of individual well owner, the mailing address of the owner (if it is different from the well location site), and the telephone number of the owner, were removed from the records, and the remaining portions of the records were disclosed.

Also attached to the Ministry’s decision letter were six pages of a computer printout entitled “Well Computer Printout Data”, which included information about the seventy wells, but did not include any personal information (for example, it does not include names, addresses or telephone numbers, but does include GPS coordinates for some of the wells).

The requester (now the appellant) appealed the Ministry’s decision.

During mediation, the appellant, who is involved in drilling water wells, identified that in the past he used to receive the names of individuals along with the water well information from the Ministry's Environmental Monitoring and Reporting Branch, Water Well Records Management Department. He indicated that, a few years ago, the Ministry changed its policy with respect to providing names of individuals, and as a result, he is no longer able to access the same type of information. He advised the mediator that, particularly in small towns which use concessions rather than specific addresses, the names of individuals are essential for well drillers to identify a specific well.

Also during mediation, the appellant raised the exception at section 21(1)(c), as he believes that the personal information in the records at issue has been collected and maintained specifically for the purpose of creating a record available to the general public. He also advised the mediator that an identified ground water association (the Association), which represents over 400 contractors in the water well industry in Ontario, is an interested party in this appeal.

Furthermore, during mediation both the Ministry and the appellant have decided to use this appeal as a "test case" to determine whether the disclosure of the names of individuals on water well records should be considered an unjustified invasion of personal privacy. As a result, no affected persons were notified during the mediation stage of the appeal.

Mediation did not resolve the issues, and this file was transferred to the inquiry stage of the process.

I sent a Notice of Inquiry identifying the facts and issues in this appeal to the Ministry, initially. The Ministry provided representations in response, and I then sent the Notice of Inquiry, along with a copy of the Ministry's representations, to the appellant. I also sent the Notice of Inquiry and the Ministry's representations to the Association as an interested party, and they were invited to make representations on the issues.

In the Notice of Inquiry I sent to the appellant and the Association, I also set out the following:

I also note that the Ministry has severed various types of information from the water well records at issue. The types of information which have been severed can be categorized as follows:

- the names of individual well owners, including:
 - the names in association with a specific municipal address, and
 - the names in association with a "general" rural address (ie: a rural route)
- the home telephone numbers of individual well owners
- the mailing addresses of individual well owners (where these addresses are different from the address of the well).

I then invited representations on the issues set out in the Notice of Inquiry with respect to each of these different types of information severed by the Ministry.

The Notice of Inquiry also stated:

In addition, on my review of the water well records, I note that these records include a space entitled "Location of well" on which a "sketch" of the location of the well can be drawn. Most of the records at issue include a sketch of the well location on a small diagram. To the extent that the appellant provides representations on the issues regarding the importance of identifying the location of the wells, the appellant is asked to also reference the information on these "sketches", which appear to provide some detail about well locations.

Furthermore, on my review of the water well records, I note that these records include a space for the GPS reading to be noted. The GPS reading information is completed in approximately one-third of the sample records provided in the course of this appeal. To the extent that the appellant provides representations on the issues regarding the importance of identifying the location of the wells, the appellant is asked to also reference the information about the locations of the well provided by the GPS readings.

The appellant is also invited to address the following:

What information does the record in the severed form give about wells in a particular area, and why is this not sufficient to enable a party to determine information about wells in that area?

Are there other means available to determine land ownership in a particular area sufficient to permit a party to contact well owners in that area?

Why is the information necessary in order to perform maintenance and repair on an existing well, whose location is known?

Both the appellant and the Association have provided representations in response.

RECORDS:

The records at issue in this appeal are the severed portions of 70 well water records. The Ministry has severed various types of information from these water well records, and this severed information can be categorized as follows:

- the names of individual well owners, including:
 - the names in association with a specific municipal address, and
 - the names in association with a “general” rural address (ie: a rural route)
- the home telephone numbers of individual well owners
- the mailing addresses of individual well owners (where these addresses are different from the address of the well).

Also at issue in this appeal is a well printout report. The report that has been disclosed to the requester contains information about each of the 70 wells in a computerized printout; however, the printout does not contain the information that was severed from the well records. The Ministry has indicated that it produced the printout with certain fields removed (for example, the names of individual well owners), but that the Ministry could simply include these fields in the computer printout if required to do so.

DISCUSSION:

PRELIMINARY MATTER – NATURE OF THE RECORDS

As set out above, the records at issue in this appeal consist of the water well records for 70 properties, as well as the computer printout of those records. However, both parties view this appeal as a “test case” that will provide guidelines for bulk access under the *Act* to all 750,000 water well records in Ontario.

The Ministry also states:

The requester also asked for a computer printout of the well records which is a summary generated by the ministry’s database of the well records.

The ministry used to disclose [the well water records] to the public without any severances; however, with the intent to place the information on its website, the ministry decided in 2003 to sever personal information from the record prior to disclosing to the public.

The requester objected to this change in policy because it has made it more difficult to identify the well that is in need of maintenance or repair.

In this appeal, the request is not for one specific water well record, or even for a few select water well records in a given area; rather, the request is for selected water well records from seven different districts, which I understand were randomly selected as samples of the types of well records which constitute the approximately 750,000 water well records in Ontario.

In these circumstances, I find that this request is, in effect, for “bulk access” to all information in the water well records held by the Ministry.

Furthermore, I note that the appellant as well as the Association provide representations in support of their position that, due to the nature of the work they do and the importance for them to have the previous water well record relating to a well when they are working on that well, access to the records ought to be granted. However, as identified by previous orders of this office, disclosure of the records to the appellant would be the same as disclosure of the records to the world, and my findings in this appeal would provide guidelines for other requests for bulk access to the records.

With these considerations in mind, I will review the issues raised in this appeal.

PERSONAL INFORMATION

The section 21 personal privacy exemption applies only to information which qualifies as “personal information”, as defined in section 2(1) of the *Act*. “Personal information” is defined in that section 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 if 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 where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Ministry submits that the well owner's surname, first name, mailing address (where it is different from the address of the well location), and telephone number were denied because these data elements are considered personal information as defined at section 2(1) of the *Act*. The Ministry also states that all other data elements contained in the records are considered to be about the well, its location, site characteristics and details about the company/technician that drilled the well on behalf of the well owner, and that these are not personal information.

The Ministry's representations on the owner's surname, first name, mailing address (where it is different from the address of the well location), and telephone number state:

... section 2(1)(h) has been interpreted to mean recorded information about an identifiable individual who has made an application to the ministry for such things as [a Freedom of Information] request, and in this case, a well registration.

In Order PO-1699, the IPC ruled that the name on a land use permit constitutes personal information of the individual.

For the records at issue, the information about the well owner is provided by the well driller technician/company in order to register the well with the ministry.

For well owners who are natural persons, Order PO-2271 states that "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 their 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]."

Those well owners who are corporate entities or other organizations such as not-for-profit or municipalities are not considered to be natural persons and their names, addresses, telephone numbers and more recently, email addresses are disclosed publicly without any severances.

The vast majority of the approximately 750,000 wells in the province are owned by private individuals or natural persons.

In terms of the mailing address of the well owner, this is personal information about an identifiable individual.

While many individuals who own a well also live year round at the location, there are a large number, such as cottage owners, who do not consider the well location address as their permanent address.

It is only the name, mailing address (where it is different from the address of the well location), and telephone number that are removed from the record prior to being disclosed to the public.

According to Order P-230, if there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) of [the *Act*] as personal information. In this order, septic system applications and municipal address without an identifying name do not qualify as personal information.

The Ministry submits that well owner's name and mailing address where different from the well location details reveals the fact that the individual has commissioned a well drilling company to drill a well and register that well with the ministry and therefore meets the definition of personal information.

The appellant's representations, as well as those of the Association, do not address the issue of whether the information contained in the records is personal information; rather they focus on whether the disclosure would constitute an unjustified invasion of privacy, which is addressed below.

Analysis and Findings

On my review of the information severed from the well records, I am satisfied that this information constitutes personal information.

It is clear that an identifiable individual's telephone number and mailing address (where different from the address of the well) constitutes the personal information of the individual under the definition found in section 2(1)(d) of the *Act*.

With respect to the name of the individual well owner, a number of previous orders, including those referenced by the Ministry, have determined that the names of individuals in connection with property applications and permits, constitute the personal information of those individuals. For example, Order PO-1699 found that an individual's name on a land use permit constituted that individual's personal information. Similarly, Order PO-2048 found that an individual's name in correspondence relating to an application under the *Lakes and Rivers Improvement Act* was also personal information. Furthermore, in Order MO-2053, Senior Adjudicator John Higgins had to determine whether addresses of the locations of the septic systems found in the septic system applications constituted "personal information." The senior adjudicator reviewed

the distinction between “personal information” and “information relating to a property” as discussed in Order M-23, and then stated:

Subsequent orders have further examined the distinction between information about residential properties and “personal information”. Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have committed infractions against property standards by-laws was personal information. In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites was found not to be personal information. ...

However, Order PO-2322 took a somewhat different approach to the issue. In that order, in which access to water well record information was also requested, former Assistant Commissioner Tom Mitchinson had to determine whether the current owner of a property could access the records relating to the water well issues the previous owner of the property had regarding the well on the property (including unsevered records relating to well water analysis and test results taken on that property). In that order former Assistant Commissioner Mitchinson found as follows:

I find that all of the requested records contain information about a property, specifically the property currently owned by the appellant. Back in 1987, a new well was drilled on this property, along with others in the same vicinity, in order to address contamination issues caused by road salt used by the Ministry that had leaked into the existing wells. The Ministry retained the services of [the Ministry of the Environment (the MOE)] to investigate the cause of the problems on these properties and, as a result of MOE’s investigation, administrative arrangements were made with the various property owners, including the former owner of the appellant’s property, in order to proceed with the well drilling project. No particular personal considerations were relevant in this context and, in my view,

the records created by the Ministry contained information about the various properties and not about the former owner in any personal sense. ...

Simply stated, the information at issue in this appeal is “about” the property in question and not “about” the former owner. As such, it falls outside the scope of the definition of “personal information” in section 2(1) of the *Act*. Because only “personal information” can qualify for exemption under section 21(1), this exemption has no application in the circumstances of this appeal.

However, some of the records in Order PO-2322 also contained information about neighbouring property owners. With respect to this information, former Assistant Commissioner Mitchinson stated:

Portions of certain records include the names, addresses and telephone numbers of various property owners other than the former owner of the appellant’s property, and other records outline various test results from these neighbouring properties. It is clear from the wording of the appellant’s request that she is only interested in receiving information about her own property, and I find that information concerning the owners and test results on other properties falls outside the scope of the appeal and should not be provided to the appellant.

Accordingly, former Commissioner Mitchinson did not have to address the issue of whether the names, addresses or telephone numbers of other well owners constituted their personal information.

Order PO-2322 appears to support a view that, when a request is made for water well information about a particular well commissioned by a particular individual, the name of the individual in connection with that property information might not constitute the personal information of that individual.

In this appeal, however, the request is not for water well information about a particular well commissioned by a particular individual but, as indicated, for many water well records. In these circumstances, based on the nature of the request and the records at issue, I am satisfied that the name of the individual on a well water record would reveal that this individual commissioned a well drilling company to drill a well and register the well with the Ministry. As a result, I am satisfied that the disclosure of the name would reveal other personal information about that individual, and constitutes the personal information of that individual under the definition found in section 2(1)(h). This decision is in keeping with previous decisions regarding personal information found on other property records as identified above.

I also note that the request resulting in this appeal was modified and expanded to produce a more comprehensive package of responsive records, and that the final revised request was for “select wells – 10 well records from [7 different districts] containing both corporate and personal well owners and a well print out report.” As stated above, the request in this appeal is, effectively, for bulk access to all information in the 750,000 well water records held by the Ministry. In my view, a request of this nature is different than a request for the water well record relating to one

specific property or property owner. This supports my finding that the names of the individual well owners set out in the records constitutes the personal information of those individuals.

Finally, I agree with the position of the Ministry that the other information contained on the well records, including the location of the well (including the municipal address or GPS location), and the specifics about the well (for example the depth, casing diameter, water levels, etc.), constitutes information about the well and the property, and is not personal information (see Order MO-2053). Furthermore, water well records that do not relate to identifiable individuals, but to corporate entities or other organizations such as not-for-profit or municipalities, do not contain personal information.

INVASION OF PRIVACY

Where an appellant seeks the personal information of other individuals, section 21(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies.

The appellant submits that the information at issue is not exempt due to the application of the exceptions at sections 21(1)(b) and (c). The Ministry claims that these sections, as well as section 21(1)(f), do not apply. These sections read:

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

- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(b) – compelling circumstances affecting health or safety

The Association submits that the personal information at issue is not exempt due to the application of the exception at section 21(1)(b), and states:

If a well is not properly identified a technician does not know how the well was constructed, flow rates, and water depths involved and there is potential for causing harm to the well which would cause the well owner much additional cost or the loss of water on tap for an ongoing period perhaps indefinitely out of that well.

Section 21(1)(b) establishes that the personal information of other individuals can be disclosed in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates. Previous orders have established that this exception applies where specific personal information about an individual should be disclosed in the specific circumstances of the request (see Order PO-2541). Indeed, the wording of the section suggests that the application of this section should be used on a case-specific basis, after which the specific individuals must be notified. In this appeal, I am not satisfied that the exception in section 21(1)(b) applies.

In the first place, I am not satisfied that the results the Association describe constitute “compelling circumstances affecting the health or safety of an individual.” The Association has stated that if the information relating to a well is not provided, “... there is potential for causing harm to the well which would cause the well owner much additional cost or the loss of water on tap for an ongoing period perhaps indefinitely”. In my view, incurring additional cost or failure to have water for a period of time does not constitute “compelling circumstances affecting the health or safety of an individual.”

However, even if the inability to obtain information about the history of a particular well could lead to significant water issues which could constitute “compelling circumstances affecting the health or safety of an individual,” I find that section 21(1)(b) does not apply to the information at issue in this appeal. As identified above, the record at issue in this appeal effectively consists of the personal information contained in approximately 750,000 well water records. In my view, the exception in section 21(1)(b) does not apply in these circumstances.

Section 21(1)(c) - public record

The Ministry addressed the application of section 21(1)(c) in its representations and stated:

The appellant has raised the issue of subsection 21(1)(c) of the *Act* - that the personal information is collected and maintained specifically for the purpose of creating a record available to the general public.

The Ministry rejected applying section 21(1)(c) of the *Act* to the records at issue as Ontario Regulation 903 is silent on disclosure of the well record.

Specifically, section 16.3 and 16.4 of the [Ontario Regulation 903] outlines the need to register the well using the well record, but does not require disclosure to the public.

The purpose for collecting water well records is to provide detailed technical data about the aquifers in the province.

When the program started in the 1950s, subsurface water conditions were sketchy and as more and more of the wells were registered, trends began to emerge that would assist landowners and municipalities in determining whether to drill a well and where.

The economic benefits are significant since owners would not drill in aquifers where the water volume or quality is unsatisfactory.

As a result, details about wells in a given area are crucial to the public; however, the name of the owner who commissioned the well is not essential.

The Association submits that the information at issue is not exempt due to the application of the exception at section 21(1)(c), and states:

The information regarding a well on a Water Well Record is maintained for a public record of aquifers and water bearing formations [...] the personal information (ie) name of original owner helps identify the location of the well on records preceding the GPS locations mandated today.

Previous orders have stated that in order to satisfy the requirements of section 21(1)(c), the personal information must have been collected and maintained specifically for the purpose of creating a record available to the general public (see, for example, Orders P-318 and PO-1736).

I have carefully considered the position of the parties and the nature of the records in this appeal. Both the Ministry and the Association acknowledge that the well water records contain important information about aquifers and water bearing formations, and that details about the wells are important for the public to know. The Ministry also argues, however, that the names of the individuals who commissioned the wells is not essential; however, the Association and the appellant argue that, without the name of the well owner, in cases where the well is only identified by a rural route number, or is otherwise difficult to identify, the name of the owner of a well is vital to the proper identification of the well, and effectively forms part of the location description of the well.

I find the argument made by the Association and the appellant relating to the importance of the owner's name in properly locating a well (where other location descriptions in the water well record are inadequate) to be very compelling. These parties provide a strong argument in favour of disclosing the owner's name in those situations, both in support of the position that section 21(1)(c) might apply, as well as in support of the position that this personal information ought to be disclosed under section 21(1)(f). However, given my finding regarding the nature of the record at issue in this appeal, it is not necessary for me to make a determination on this issue for particular water well records. I make this finding for the following reasons.

I found above that this request is for "bulk access" to all information in the well water records held by the Ministry. In circumstances where a request is for "bulk access," different considerations apply. Order P-1144 clearly identifies this distinction. In that order a request had been made to the Ministry of Transportation for a complete list of all drivers in Ontario. The

appellant argued that the names and drivers licence numbers are collected and maintained for the purpose of creating a record that is available to the general public for the purpose of section 21(1)(c). The Ministry conceded that, for certain purposes and in certain situations, section 205 of the *Highway Traffic Act* required the Ministry to collect and maintain the personal information of all drivers and owners of vehicles for the purpose of creating and maintaining a record available to the public. However, the Ministry took a different position with respect to requests for bulk access to driver licencing information, and stated:

The ministry submits that personal information which is maintained for the purpose of creating a record that is available to the general public, as contemplated by section 37 [and presumably section 21(1)(c)], changes its character where it is to be disclosed, not as responses to individual requests for information about single individuals or a limited group defined according to some reasonable criteria, but as the personal information of more than half of the total population of the Province.

Former Assistant Commissioner Tom Mitchinson reviewed the argument and then stated:

The Ministry has a special bulk request policy which deals with large volume requests by individual requesters. Under that policy, requests are screened through the Licensing Administration Office to ensure that planned uses of the bulk information enhance road safety and do not involve uninvited solicitation. In order to qualify under this bulk access policy, a requester must apply for Authorized Requester status and, if granted, must enter into a formal agreement with the Ministry. This agreement controls the subsequent use of any bulk information provided by the Ministry.

I accept the Ministry's submission that requests for information in bulk raise unique considerations which are relevant to the application of section 21(1)(c). The Ministry does not release information in response to bulk requests unless the requester is granted authorized user status and meets the criteria set out in its policy. Clearly, bulk requests are not a routine matter but rather are subject to various constraints including a review process.

It is also important to note that even in response to individual requests, the Ministry does not release driver licensing information pursuant to section 21(1)(c) unless specific identifiers, such as name or driver's licence numbers, are provided. Therefore, it cannot be said that the Ministry routinely releases information in the form requested by the appellant, the names **and** driver's licence numbers.

In order to dispose of the issues under consideration in this appeal, it is not necessary for me to determine whether the Ministry's driver information database is a "public database", or whether the exception provided by section 21(1)(c) is applicable in the context of individual requests for access to driver information. I specifically decline to make these determinations, since these are complex issues with far reaching implications. However, as far as the appellant's request for bulk

access to the names and drivers licence numbers of all Ontario drivers is concerned, I find that this information is not “collected and maintained specifically for the purpose of creating a record available to the general public,” and section 21(1)(c) of the *Act* does not apply in the circumstances of this appeal.

I agree with the approach taken in Order PO-1144 and apply it to the situation in this appeal. Concerning the appellant’s request for bulk access to the names of individuals contained on the water well records, I find that this information is not “collected and maintained specifically for the purpose of creating a record available to the general public,” and that section 21(1)(c) of the *Act* does not apply.

I find further support for this approach in the findings in Investigation Report PC-980049-1, in which Commissioner Ann Cavoukian identified the important distinction between records which are available on a “record-by-record” basis, and “bulk access.” In addressing whether land registration information was being properly disclosed, she stated:

Since the information in question is available only one record at a time, there is also a practical limit to the ability of recipients to obtain and possibly abuse the personal information in the documents.

The Ministry has not, however, provided us with any information to suggest that the microfilms in question are being made available by the Land Registry Offices in bulk to members of the public. On the contrary, in its original submissions the Ministry explains that “all information contained in the land registration documents, plans and records is available for review on a record-by-record basis”. Therefore, it does not appear that “bulk” access is provided to users of the information.

The bulk disclosure of the personal information in the microfilms to the Corporation does not conform to the criteria set out above. The Land Registry personnel do not appear to have a statutory duty to make the microfilms available in bulk to the public, nor does there appear to be a regularized system of bulk access to the microfilms. Accordingly, it is our view that the personal information contained in the microfilmed records, which are being disclosed in bulk to the Corporation, is not maintained for the purposes of creating a record that is available to the general public. ...

Both Order PO-1144 and Investigation Report PC-980049-1 are consistent with my finding that bulk access to the names of individuals contained on the water well records is not information “collected and maintained specifically for the purpose of creating a record available to the general public,” and section 21(1)(c) of the *Act* does not apply to the requested records.

Section 21(1)(f) – unjustified invasion

The Ministry claims that disclosing the records would constitute an unjustified invasion of personal privacy, and that the exception in section 21(1)(f) does not apply.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the institution to consider in making this determination; section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Association has taken the position that the records ought to be released, as the factors favouring disclosure in sections 21(2)(b) and (c) apply. Those sections read:

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,

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;

With respect to the application of section 21(2)(b) (promote public health and safety), the Association submits that section 21(2)(b) is a factor favouring disclosure, and states:

Should the well not be properly identified and something untoward happen during servicing it is very possible for the problems to reflect on the aquifer and therefore any other users of that aquifer.

The Association then provides information regarding how important it is that a water well record be able to be identified as the correct record for the well in question “especially when servicing and definitely when the well is to be decommissioned.” It then states:

The appellant indicated that in many areas where specific addresses are not used the names of the individuals are essential for well drillers to identify a specific well. This is very true and attached are examples to show you what we are up against.

Many wells were buried over the years to prevent freezing prior to inventions such as pitless adapters. In such cases nothing appears on the surface of the ground to indicate even the location of the well on the property let alone how the well was constructed.

In most cases the Water Well Records have been registered to the Lot, Concession, Township and County according to the original divisions set up under the original survey...

The Association then provides an example of such a situation, and refers to a former London Township in which the original survey set out lots of 100 acres. It then states:

Over time these 100 acre lots have been subdivided into smaller lots and it is not uncommon to have many wells registered to one lot and concession with a common rural route address. Depending on the quality of the sketch provided by the original driller finding and identifying a specific well can be next to impossible. In many cases the ability to identify the well by the name of the original owner of that well is the only hope. We can find out who built (the original owner) at the Land Registry Office and cross reference to Water Well Records on file if we have those names to refer to when searching. To add to our plight the City of London has annexed numerous times over the years and many of these wells now lie within the City of London, have a specific street address etc. but the original owner's name will be all we have for the initial research to match a Water Well Record to a property. Over the course of time Ministry of Environment personnel added UTM and elevation readings derived from maps to many older records but they are rarely accurate enough to pin point a well.

Many of the original owners are now deceased, have moved away or in some cases are the ancestors to the current owners who would benefit from the information off these Water Well Records. I fail to see how a professional water well technician's knowledge of their purchase of a well could cause any problems with their privacy.

The Association also provides attachments to its representations, which contain water well records that show how difficult it is to determine the exact location of a well from the diagrams alone, and states:

These are just ten examples of the issues we face in trying to determine what Water Well Record belongs to what well when we have no names to go by and I can provide you with many more if you so desire. ...

Regarding section 21(2)(c) (informed choice in the purchase of goods and services), the Association submits as follows in support of its position that the factor listed under 21(2)(c) is relevant to a decision not to disclose the requested information:

When a driller has completed a Water Well Record he/she has recommended a pumping rate and depth at which the water is to be removed. If the well is not properly identified the servicing technician is not able to determine the hardware required for repair or replacement.

Findings

I have carefully considered the application of the factors referred to by the appellant and the Association.

As I stated above, I find the arguments made by the Association and the appellant relating to the importance of the owner's name in properly locating a well (where other location descriptions in the water well record are inadequate) to be very compelling. The additional information in the Association's representations on the importance of properly identifying a well supports their strong arguments in favour of disclosing the owner's name in specific circumstances and for specific purposes.

However, given my finding regarding the nature of the record at issue in this appeal, it is not necessary for me to make a determination on this issue for individual water well records. Although the factors identified by the parties may be valid considerations in circumstances where a request is made for a particular well water record or perhaps even records relating to neighbouring wells, or records in a given area, that is not the situation in this appeal. The appellant's request is for bulk access to the names of individuals contained on the water well records, and I find that the factors favouring disclosure in section 21(2) do not apply in these circumstances.

ORDER:

I uphold the decision of the Ministry to deny access to the withheld portions of the Water Well records, and dismiss the appeal.

Original Signed by: _____
Frank DeVries
Adjudicator

July 8, 2010

POSTSCRIPT

In this order I have found that the request is for bulk access to personal information, and on that basis have determined that the information qualifies for exemption under section 21(1) of the *Act*. I also referred to the fact that, in the context of a freedom of information request, disclosure of the records to the appellant would be the same as disclosure to the world, and my findings in this appeal would apply equally to others requesting bulk access to the records.

However, in reviewing the issues raised by the appellant and the Association, I noted that a number of the concerns and issues identified by them regarding the importance of being able to properly identify water well records that relate to particular properties are very valid. Furthermore, the Ministry appears to acknowledge the importance of providing municipalities

and landowners with detailed technical data about the aquifers in the province, including details about wells in a given area, which the Ministry states “are crucial to the public.” This information cannot be provided if necessary identifying information is unavailable to those stakeholders.

Given all of these considerations, if the request in this appeal had not been for bulk access to water well records, but for the water well record for a particular well or series of wells, required by a water well driller for the purpose of properly identifying the well, the result in this order may have been different.

In addition, some of the orders referred to above (for example, Order PO-1144) refer to special bulk request policies established by Ministries, in which formal agreements are entered between Ministries and parties with legitimate interests in obtaining specific information, to enable those parties to access that information for distinct, limited purposes. This may be something the parties in this appeal could consider as a way to address the legitimate concerns raised about properly identifying older water wells, when that information is required for specific purposes. Furthermore, as identified by the Ministry, this information could be produced in electronic format, with certain fields added, if required.

Lastly, I note that the use of specific GPS location information on more recent water well records is reducing the number of records for which the name of an individual is important in properly locating a well. As stated by the Association: “If all records contained valid GPS values for the location of the well (as [newer records] do now) this dialogue would not be so necessary.”