

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-2996-F

Appeal PA10-335

Ministry of Natural Resources

September 21, 2011

Summary: In response to a request for records related to an identified property in northern Ontario, the Ministry of Natural Resources issued a decision granting partial access. Portions of the records were withheld pursuant to the mandatory personal privacy exemption in section 21(1). On appeal of the decision by one of the individuals identified in the records, Interim Order PO-2969-I determined that the third party was entitled to further notice under section 28(1)(b) of the *Act*. Following this additional notification, this office then considered the ministry's access decision respecting certain records. This order upholds the ministry's decision, finding that the portions of the records to be disclosed did not contain "personal information" under the definition of the term in section 2(1) of the *Act* and could not be exempt under 21(1). The third party appeal is dismissed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1).

Orders and Investigation Reports Considered: Order PO-2969-I

OVERVIEW:

[1] This order addresses the appeal filed by an individual who had been identified in records located in response to a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Natural Resources (the ministry). The original requester sought access to "all information and letters pertaining to property on [an identified island]... on Lake Temagami from 2005 to present."

[2] The ministry issued an access decision on October 18, 2010 to the requester and other individuals (the affected parties), advising that it intended to provide the requester with partial access to the records. Access to the remaining records, or portions of the records, was denied pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] One of the affected parties objected to disclosure of all of the records even though the ministry had notified him under section 28(1)(b) of the *Act* with respect to only four pages, which appeared to contain information relating to him.¹ Consequently, this affected party (now the appellant) appealed the ministry's decision to this office, which opened a third party appeal. The original requester did not appeal the ministry's decision to grant partial access.

[4] I decided that it would be necessary to address the third party appellant's entitlement (to receive notice) under section 28(1)(b) of the *Act* as an interim matter. I decided the issue of notification under section 28(1)(b) in Order PO-2969-I, which was issued on May 12, 2011.

[5] Pursuant to Order PO-2969-I, the ministry wrote to the third party appellant with respect to two additional records for which I found notice ought to be provided to him under section 28(1)(b) of the *Act*.² The third party appellant was given an opportunity to submit representations about the possible disclosure of those records. However, the appellant did not submit representations to the ministry, and the ministry subsequently issued a decision letter on July 22, 2011, granting partial access to those records.

[6] The ministry also disclosed to the requester the other records for which notice was not required, pursuant to the terms of its October 18, 2010 decision letter. A copy of the ministry's June 24, 2011 letter to the original requester was provided to this office in August. No further appeals were filed with this office respecting either the disclosures granted in the initial October 18, 2010 decision letter to the original requester or the ministry's July 22, 2011 access decision respecting pages 126 and 127. In this context, the only issue remaining for determination in this final order is the third party appeal of the ministry's access decision with respect to pages 113-116.

RECORDS:

[7] The four pages remaining at issue consist of correspondence and forms submitted to the ministry by the third party appellant.

¹This provision states: "Before a head grants a request for access to a record, ... that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f), the head shall give written notice in accordance with subsection (2) to the person to whom the information relates."

² These are the records identified as pages 126 and 127.

ISSUE:

[8] Would the ministry's proposed disclosures result in an unjustified invasion of personal privacy of the third party appellant?

DISCUSSION:

[9] The ministry decided to withhold some of the information from pages 113-116 of the records based on the mandatory personal privacy exemption in section 21(1) of the *Act*, which is designed to protect individuals against unjustified invasions of their personal privacy. The third party appellant objects to the ministry's decision to partially disclose these records to the original requester.

[10] In deciding whether or not disclosure would result in an unjustified invasion of personal privacy under section 21(1), it is necessary to first determine if the records contain "personal information" and, if so, to whom it relates. This is because only personal information can be exempt under the personal privacy exemption at section 21(1).

[11] The definition of "personal information" is found in section 2(1) of the *Act* and refers to "recorded information about an identifiable individual," including, for example:

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of 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,

(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;

[12] The list of examples of personal information under section 2(1) is not exhaustive, however, and information that does not fall under paragraphs (a) to (h) may still qualify

as personal information (Order 11). In this appeal, another part of section 2 of the *Act* is also relevant. Section 2(3) states:

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.

[13] The ministry submits that only personal information - as defined in section 2(1) of the *Act* - has been withheld from pages 113-116. According to the ministry, the appellant's name and address appear in the records and is not being disclosed. The ministry notes that the "only name that has not been exempted is the name and phone number of a member of the Minister's staff acting in her professional capacity."

[14] The ministry argues that there is no personal information remaining in the severed records. I understand this to mean that the ministry is of the view that the portions of pages 113-116 that it proposes to disclose to the original requester do not contain any personal information. The ministry states:

As there is no personal information on the severed documents which the ministry is prepared to release, section 21 does not apply. There are no other grounds for not disclosing the severed records and it is the ministry's position that they should be released.

[15] I agree with the ministry's position in this appeal.

[16] Based on my review of the records, I find that pages 113-116 contain the appellant's personal information according to paragraphs (a), (d), (e), (f) and (h) of the definition in section 2(1) of the *Act*. I also agree with the ministry, and I so find, that the name and telephone number of the ministry employee who wrote the letter on page 113 does not qualify as her personal information because it fits within the scope of section 2(3) of the *Act*.

[17] I am satisfied that the ministry's access decision of October 18, 2010 purports to withhold all of the information that I have found above to qualify as "personal information" about the appellant, according to the definition of that term in section 2(1) of the *Act*. I am satisfied that where it is not reasonably possible to sever that personal information - i.e., on pages 114 and 115 - the ministry intends to withhold the entire page.

[18] With respect to the ministry's access decision pertaining to the disclosure of portions of pages 113 and 116, I note once again that there has been no appeal of the decision by the original requester. In the circumstances, I am satisfied that the information that the ministry proposes to release on pages 113 and 116 does not constitute "personal information." As stated previously, the mandatory personal privacy

exemption can only apply to "personal information." Since pages 113 and 116 in their severed form do not contain "personal information," section 21(1) cannot apply to them, and it is therefore not necessary for me to review the application of the exemption.

[19] As I have upheld the ministry's access decision respecting pages 113-116, the ministry may proceed with granting access to the original requester in accordance with its October 18, 2010 decision letter.

ORDER:

1. I uphold the ministry's October 18, 2010 access decision and dismiss the third party's appeal of that decision.
2. I order the ministry to disclose pages 113 and 116 to the original requester pursuant to the October 18, 2010 decision letter, by sending a copy of the records no later than **September 28, 2011**.
3. To verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records as disclosed to the appellant, upon request.

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ September 21, 2011