



Information and Privacy  
Commissioner/Ontario

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

# ORDER ORDER 140

Appeal 890111

Ministry of Natural Resource



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## O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) a right to appeal any decision of a head to the Commissioner.

The facts of this case and the procedures employed in making this Order are as follows:

1. On January 4, 1989, the appellant made a request to the Ministry of Natural Resources (the "institution") for the following record:

A copy of the reasond (sic) letter send (sic) by [a named individual] to the M.N.R. on behave (sic) of "[a named island]" land owners, responding to our docking situation.

2. On January 17, 1989, the institution responded, denying access to the record requested.

The institution stated that to provide access to the record would "constitute an unjustified invasion of personal privacy. I am therefore refusing access to this letter under s.21 of the Act."

3. By letter dated March 29, 1989, the requester's lawyer appealed the denial of access.
4. On April 26, 1989, I gave notice of the appeal to the institution.
5. In his letter of appeal regarding the denial of access, the lawyer stated that:

Respectfully, we find this to be offensive and entirely inconsistent with the spirit of the legislation. [The appellant's name]'s work is seasonal and he is a very small businessman who works hard to make an honest living. It is unfortunate when small businessmen on limited incomes have to be faced with such a response.

[It was noted that various documents were supplied with the letter of appeal.]...We doubt that the Deputy Minister would have had all these documents at his disposal in considering his judgment. If he did, we respectfully submit that it was in error.

...Should [the appellant's name] be required to remove some of his dock extensions the loss of income would likely be sufficient to put him out of business. You can therefore appreciate that this is a serious matter for our client.

6. The record at issue was obtained and reviewed by an Appeals Officer from my staff. It was the view of the Appeals Officer that taking into consideration the broad wording of portions of the letter of appeal, the exact nature of the original request should be confirmed with the lawyer for the appellant and this was, in fact, done.
7. By letter dated October 26, 1989, I notified the institution and the appellant that I was conducting an inquiry into this matter. One affected party, the writer of the letter in issue, was also notified of the appeal by this Office and given the opportunity to make representations with respect to the issues affecting his interests. Enclosed with the Notice of Inquiry was a copy of a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. The Appeals

Officer's Report outlines the facts of the appeal, and sets out questions which paraphrase those sections of the Act which appear to the Appeals Officer, or any of the parties, to be relevant to the appeal. In this case, the Appeals Officer raised the applicability of subsection 10(2) of the Act to the record at issue, in addition to section 21 which had been cited by the institution. The Appeals Officer's Report indicates that the parties, in making representations to the Commissioner, need not limit themselves to the questions set out in the Report.

8. I have received representations from the affected party and the institution. The appellant has, apparently, chosen to rely on the representations which were made in the letter of appeal. I have considered all representations in making my Order.

It is important to note at the outset the purposes of the Act as set out in section 1. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counter\_balancing privacy protection purpose of the Act. The subsection provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions and should provide individuals with a right of access to that information.

Section 53 of the Act provides that the burden of proof that the record falls within one of the specified exemptions in this Act

lies with the head of the institution (the "head"). In the circumstances of this case, the affected party shares with the head the burden of proof with respect to the applicability of the exemption claimed under section 21.

The issues arising in this appeal are as follows:

- A. Whether any parts of the requested record qualify as "personal information" within the meaning of subsection 2(1) of the Act.
- B. If the answer to Issue "A" is in the affirmative, whether the disclosure of the requested record would be an unjustified invasion of the personal privacy of the person(s) to whom the information relates, pursuant to section 21 of the Act.
- C. If the answer to Issue "B" is in the affirmative, whether the requested record could reasonably be severed so that information could be disclosed to the appellant without resulting in an unjustified invasion of the personal privacy of the affected party.

**ISSUE A: Whether any parts of the requested record qualify as "personal information" within the meaning of subsection 2(1) of the Act.**

Subsection 2(1) of the Act defines "personal information" as follows:

"personal information" means recorded information about an identifiable individual, including,

...

- (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,

...

Examination of the record shows that the affected party who wrote the letter has included in his letter his name, home address, home and business telephone numbers, and his personal opinions about the development of a water lot, all of which are "personal information" as defined by subsections 2(1)(d) and (e).

**ISSUE B: If the answer to Issue "A" is in the affirmative, whether the disclosure of the requested record would be an unjustified invasion of the personal privacy of the person(s) to whom the information relates, pursuant to section 21 of the Act.**

The affected party objected to the idea of the record being disclosed, but gave no reasons as to why, under the Act, such disclosure would constitute an unjustified invasion of personal privacy.

The head, in his representations, reversed his previous decision and stated that:

Upon further reflection, the Ministry feels that the release of the letter would not constitute an unjustified invasion into the author's personal privacy. The letter merely describes the impact of the extension of [the appellant's name]'s docking facilities onto Crown Land. It does not reveal any personal information concerning the author or his opinion which is not already common knowledge on [a named island].

In addition, the Ministry intends to apply for a Court Order, pursuant to section 23 of the Public Lands Act, for the removal of the docks occupying Crown land. During the course of legal proceedings, it would

appear likely that the letter will be disclosed to [the appellant's name] or his solicitor.

Section 21 of the Act provides a general rule of non-disclosure of personal information to any person other than the person to whom the information relates. Certain exceptions to this general rule are set out in subsection 21(1). These exceptions include the consent of the person whose personal information it is, health and safety circumstances, personal information collected for the purposes of maintaining a public record, for research purposes, or where it would not be an unjustified invasion of personal privacy to disclose the personal information. The only exception that is in issue in this appeal is the question of whether disclosure of the affected party's personal information would be an unjustified invasion of the personal privacy of the affected party.

Subsection 21(2) of the Act provides guidance in determining whether the disclosure of personal information would result in an unjustified invasion of an individual's personal privacy. Turning to subsection 21(2), I note the following provisions:

(2) 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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

...

(f) the personal information is highly sensitive;

...

In my view, disclosing the affected party's home address and home and business telephone numbers would, in the circumstances of this appeal, constitute an unjustified invasion of his personal privacy. However, I find that disclosure of the affected party's personal opinions about the development of a water lot, which comprise the bulk of the remaining personal information in the record, would not be an unjustified invasion of personal privacy of the affected party. In making this finding I have considered the provisions of subsections 21(2)(d) and 21(2)(f) of the Act.

In my view, the personal information at issue (i.e., the affected party's personal opinions about the development of a water lot) is relevant to a fair determination of the rights of the appellant, against whom the Ministry of Natural Resources indicates that it intends to commence a legal action in relation to the subject matter of the record and, in addition, it cannot be said that the information in question is highly sensitive. I also find that disclosure of the identity of the affected party would not constitute an unjustified invasion of personal privacy as it is already known to the appellant, who in fact described his request in terms of the affected party's name.

**ISSUE C: If the answer to Issue "B" is in the affirmative, whether the requested record could reasonably be severed so that information could be disclosed to the appellant without resulting in an unjustified invasion of the personal privacy of the affected party.**

Subsection 10(2) of the Act provides as follows:

(2) Where 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, 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.

Upon examining the record in issue, I find that it is possible to reasonably sever it in order to disclose meaningful information to the appellant without unjustifiably invading the personal privacy of the affected party.

In conclusion, I do not uphold the head's original claim for exemption of the whole record and I order the institution to release the record with the home address and home and business telephone numbers of the affected party severed from the record. I also order that the institution not release the severed record until 30 days following the date of this Order. This time delay is necessary in order to give the affected party sufficient opportunity to apply for judicial review of my decision before the severed record is actually released. Provided notice of an application for judicial review has not been served on me and/or the institution within this 30 day period, I order that the severed record be released within 35 days of the date of this Order. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

January 19, 1990  
\_\_\_\_\_  
Date