

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3332

Appeal MA15-594

Township of Puslinch

July 8, 2016

**Summary:** The requester seeks access to a 2-page letter written by the appellant. The township's decision was to grant the requester full access to the record and the appellant appealed that decision to this office. The appellant claims that the record contains his personal information and should therefore not be disclosed. Further, the appellant claims that the record qualifies for exemption under the third party information exemption in section 10(1). This order finds that the record does not contain the personal information of the appellant. This order also finds that the information in the record does not qualify as third party information under section 10(1) as it does not reveal "a trade secret or scientific, technical, commercial, financial or labour relations information." Accordingly, the appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) definition of 'personal information', 10(1)(a), 10(1)(c), 14(2)(h), 14(2)(i), 14(3)(b) and 14(3)(g)

**Orders and Investigation Reports Considered:** Order PO-2225, Order R-980015 and Order MO-1180

### OVERVIEW:

[1] The Township of Puslinch (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a "2002 packet" relating to a specified address. The township located records responsive to the request. Of these responsive records, the only one at issue in this appeal is a 2-page

letter written by a third party.

[2] In accordance with section 28 of the *Act*, the township notified the third party of the access request since the third party's interests could be affected by disclosure of the letter. The township invited the third party's position on disclosure, noting the possible application of the mandatory personal privacy exemption in section 14 and the mandatory third party information exemption in section 10(1) of the *Act* to the letter. The third party objected to disclosure of the letter. The township considered the third party's position and objection, but decided to grant the requester full access to the letter.

[3] The third party (now the appellant) appealed the township's decision to this office. I sought representations from the township and the appellant, both of whom submitted representations. In the circumstances, I did not seek representations from the original requester.

[4] In this order, I find that the record does not contain personal information and therefore the personal privacy exemption under section 14(1) cannot apply and it also does not qualify for exemption under section 10(1). I dismiss the appeal.

## **RECORD:**

[5] The sole record at issue is a two-page letter written by the appellant in 2002.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 10(1) apply to the record?

## **DISCUSSION:**

**Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[6] Section 2(1) defines "personal information" as follows:

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

...

(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,

[7] 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.<sup>1</sup>

[8] Section 2(2.1) relates to the definition of personal information. This section states:

(2.1) 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.

[9] 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.<sup>2</sup>

[10] 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.<sup>3</sup>

[11] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

[12] The township and the appellant disagree as to whether the information in the record is of a personal or professional nature. The appellant suggests that any information concerning his business can easily be traced back to him personally because of the nature of the information. Further, the appellant submits that there is "a very personal tone to the information" in the letter and given the obvious nature of that information it could only be considered personal information. He suggests that the information in the record falls under paragraphs (e) and (f) of section 2(1) of the *Act*, that the information is personal and not intended as a matter for public scrutiny. In

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

addition, the appellant states that the presumptions against disclosure of personal information in section 14(3)(b) and 14(3)(g) have application given that the record is a letter that provided a direct response and was relevant to an investigation regarding a zoning requirement and restrictions on the subject lands. In his representations, the appellant refers to serious consequences if he did not respond to the township.

[13] According to the township, the record was created in response to the township's request that the appellant, the owner of a corporate property, bring the property into compliance with the *Ontario Building Code Act* (the *OBCA*). The township provided a copy of relevant minutes from its council meeting from a specified date, where council referred to the use of said property as not being in compliance with the *OBCA*. Further the township also provided copies of the 2 orders-to-comply issued to the corporate entity. The record in dispute is a letter written by the appellant addressing issues arising from these orders-to-comply.

[14] The township submits that the information does not qualify as personal information because the letter was submitted on behalf of a company. The president and director of the company, wrote the letter. This was evidenced in the corporate profile report provided by the township. The township also provided the sales details concerning the property in question on a municipal property assessment corporation report showing that since 2001 the appellant's company owned the property that was the subject of the letter.

[15] The appellant has specifically cited section 2(1)(e) (personal opinion or views) and 2(1)(f) (private or confidential correspondence) as applicable to the record.

[16] Section 2(1)(e) states that "personal information" includes, "the personal opinions or views of the individual except if they relate to another individual." In Reconsideration Order R-980015, Adjudicator Donald Hale examined the difference between personal opinions and expressed views that take place in a business context. He stated:

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of personal information contained in section 2(1)(e) of the Act. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message

[17] After reviewing the record, I conclude that there is no personal opinion expressed in the letter. The letter represents the business owner's response to the situation that led to the need for the orders-to-comply to be issued by the township. The content of the letter does not qualify as a personal opinion or personal view and I find it is a view expressed by the third party in the context of his professional responsibilities and accordingly not his personal opinion under section 2(1)(e). It is clear from the record that that the author is speaking in an official capacity about the situation concerning the orders-to-comply, rather than in his personal capacity. Despite the appellant's submission that the circumstances under which the letter was provided demonstrate a very personal tone to the information provided, I find that any expressed views took place in a business context and represent the voice of the organization rather than that of the individual.

[18] Section 2(1)(f) states that "personal information" includes, "correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature . . ." In Order MO-1180, Senior Adjudicator David Goodis held that section 2(1)(f) "requires that the correspondence in question be sent by an 'individual' in a personal capacity, as opposed to in an official government or business capacity." In this instance, given the business context of the letter, there is insufficient evidence to demonstrate that it was sent by an individual in a personal capacity and was clearly sent by an individual in a business capacity.

[19] Prior decisions have drawn a distinction between an individual's personal and professional capacity finding that in some circumstances, information associated with a person in a professional capacity will not be considered to be "about the individual" within the meaning of section 2(1) definition of "personal information."

[20] In Order PO-2225, former Assistant Commissioner, Tom Michinson set out the following two-step analysis to determine whether the information should be characterized as "personal" or "professional":

1. In what context do the names of the individuals appear?
2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

For the purposes of this appeal, I adopt the two-step approach described in Order PO-2225.

***In what context do the names of the individuals appear?***

[21] Assistant Commissioner Michinson noted that one must ask if the context is inherently personal or is it of a business or professional context that would remove it from the personal sphere. It is clear when reviewing the letter that it can be traced back to the appellant personally based on the information in the letter. Since the letter solely concerns actions of the business, and is the business' response to orders-to-

comply issued by the township, I am unable to find that there is a personal context to the information. The letter the appellant was writing to the township concerns the business at his business address. I find the context that the information in the record is business or professional, effectively removing it from the personal information arena.

***Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?***

[22] Assistant Commissioner Michinson noted that even if the information appears in a business context, one must query if disclosure of the information would reveal something this is inherently personal in nature.

[23] As stated, the record, in one instance, contains information that can be traced back to the appellant. Besides this one instance, the letter contains no other information about the appellant in a personal capacity and no information that would reveal something of a personal nature about the applicant. There does not appear to be anything inherently personal when examining the content of the letter.

[24] Having carefully considered the representations from the parties, the record itself and for the reasons outlined above, I conclude that the information at issue in this appeal – the 2-page letter written in 2002 by the appellant – is about a business rather than about an individual in a personal capacity. This information therefore does not qualify as personal information as defined in section 2(1) of the *Act*.

[25] Given that I have found that the letter does not contain the personal information of the appellant, the mandatory personal privacy exemption in section 14(1) cannot apply to any of the information in this record. Further, the criteria for invasion of privacy referenced by the appellant also does not apply to any of the information in the record given that it does not contain personal information.

**Issue B: Does the mandatory exemption at section 10(1) apply to the records?**

***Section 10(1): the exemption***

[26] The appellant appears to take the position that sections 10(1)(a) and (c) are applicable to the record the township decided to disclose.

[27] Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

(a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

...

(c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

...

[28] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.<sup>5</sup> Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.<sup>6</sup>

[29] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

### **Part 1: type of information**

[30] The types of information listed in section 10(1) have been discussed in prior orders:

*Trade secret* means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

(i) is, or may be used in a trade or business,

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<sup>5</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

<sup>6</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.<sup>7</sup>

*Scientific information* is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field.<sup>8</sup>

*Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.<sup>9</sup>

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>10</sup> The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>11</sup>

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>12</sup>

*Labour relations* means relations and conditions of work, including collective bargaining, and is not restricted to employer/employee relationships. Labour relations information has been found to include:

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<sup>7</sup> Order PO-2010.

<sup>8</sup> Order PO-2010.

<sup>9</sup> Order PO-2010.

<sup>10</sup> Order PO-2010.

<sup>11</sup> Order P-1621.

<sup>12</sup> Order PO-2010.



- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute<sup>13</sup>
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees,<sup>14</sup>

but not to include:

- names, duties and qualifications of individual employees<sup>15</sup>
- an analysis of the performance of two employees on a project<sup>16</sup>
- an account of an alleged incident at a child care centre<sup>17</sup>
- the names and addresses of employers who were the subject of levies or fines under workers' compensation legislation<sup>18</sup>

[31] The appellant takes the position that section 10 has application in this appeal. He states that given the nature of the information in the record, disclosure would have "commercial implications." The appellant submits that the record qualifies for exemption under sections 10(1)(a) and 10(1)(c).

[32] The township is of the view that the mandatory exemption at section 10(1) does not apply.

***The record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information:***

[33] As mentioned above, for section 10(1) to apply, the third party must satisfy each part of a three-part test. In this instance, the appellant cannot satisfy the first part of that test. It appears from the appellant's representations that he is claiming that the record contains commercial information. After a review of the record, it is clear that it does not contain scientific, technical, commercial or financial information.

[34] The information in the record addresses the township's request to the third party to comply with an order in relation to a property owned by the third party's company. In my view, the information contained in the record does not include "information which

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<sup>13</sup> Order P-1540.

<sup>14</sup> Order P-653.

<sup>15</sup> Order MO-2164.

<sup>16</sup> Order MO-1215.

<sup>17</sup> Order P-121.

<sup>18</sup> Order P-373, upheld in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

relates solely to the buying, selling or exchange of merchandise or services," as set out above. Therefore, I find that there is no commercial information in the record. I am also satisfied that the letter does not contain any of the other types of information required to meet the first part of the test in section 10(1) set out above.

[35] Given my finding that the first part of the test in section 10(1) has not been met, it is not necessary to determine whether parts 2 and 3 of the three-part test also apply as all three parts of the test must be met in order for section 10(1) to apply.

**ORDER:**

1. I uphold the decision of the township to disclose the record to the requester, and order it to do so by **August 12, 2016** but not before **August 8, 2016**.
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the township to provide me with a copy of the record disclosed to the requester.

Original Signed by: \_\_\_\_\_  
Alec Fadel  
Adjudicator

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July 8, 2016