

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 PO-3832

Appeal PA17-146

Ministry of Transportation

March 28, 2018

**Summary:** The appellant submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Transportation (the ministry) for the purchase price of a specific property. The ministry located three records that contain this information and denied access to it under the mandatory exemption in section 21(1) (personal privacy) of the *Act*. In this order, the adjudicator finds that the purchase price information in the records constitutes the "personal information" of two property owners. In addition, he finds that this information is exempt from disclosure under section 21(1) because disclosing it to the appellant would constitute an unjustified invasion of the property owners' personal privacy.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information") and 21(1).

**Orders Considered:** Orders MO-1392, PO-1786-I and PO-1964

### OVERVIEW:

[1] The appellant lives in an area in which the Ministry of Transportation (the ministry) is purchasing land from various property owners. Some of the appellant's neighbours have sold their land to the ministry, and the appellant wishes to know the purchase price paid by the ministry for some of these properties to ensure that she is able to sell her land for a fair price.

[2] She submitted two access requests under the *Freedom of Information and*

*Protection of Privacy Act* (the *Act*) to the ministry. The access request that resulted in this appeal is for the purchase price of a specific property purchased by the ministry in the Township of Woolwich, Region of Waterloo. She marked the specific property on a map that she attached to her access request.

[3] In response, the ministry located three records, which contain the purchase prices that the ministry paid to two individuals who own the property identified by the appellant in her access request. It then notified these two property owners under section 28(1)(b) of the *Act* and invited them to submit representations on whether the information sought by the appellant should be disclosed. Both property owners objected and claimed that disclosing such information to the appellant would constitute an unjustified invasion of their personal privacy under the mandatory exemption in section 21(1) (personal privacy) of the *Act*.

[4] The ministry then issued decision letters to the appellant and the two property owners which stated that it was denying access to the requested information under section 21(1). The appellant appealed the ministry's access decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC assigned a mediator to assist the parties in resolving the issues in dispute. This appeal was not resolved during mediation and was moved to adjudication for an inquiry.

[5] The IPC has issued a number of previous orders that have found that the same type of information at issue in this appeal, specifically the purchase price of a property sold by an identifiable individual, qualifies as that individual's "personal information," as that term is defined in section 2(1) of the *Act*.<sup>1</sup> In addition, these orders have found that such information is exempt from disclosure under section 21(1)<sup>2</sup> because disclosing it to the requester would constitute an unjustified invasion of the property owner's personal privacy.

[6] In light of this previous line of jurisprudence, I decided to start my inquiry by sending a Notice of Inquiry to the appellant, which invited her to submit representations to me on whether the information at issue is "personal information," as that term is defined in section 2(1) of the *Act* and, if so, whether such information is exempt from disclosure under section 21(1). In addition, I asked her to explain why her appeal should be distinguished from or not decided in the same way as the previous IPC orders that addressed similar information.

[7] In response, I received brief representations from the appellant that do not address these issues or explain why her appeal is distinguishable from previous IPC orders that addressed the same type of information. After reviewing her representations, I decided that it was not necessary to seek representations from the

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<sup>1</sup> See, for example, Orders MO-1392, PO-1786-I and PO-1964.

<sup>2</sup> Or the equivalent exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

ministry or the property owners.

[8] In this order, I find that the purchase price information in the records constitutes the “personal information” of the two property owners and that this information is exempt from disclosure under section 21(1) of the *Act*.

## **RECORDS:**

[9] The ministry located three records which contain the purchase price information that is responsive to the appellant’s access request:

- Record 1 – Property purchase agreement between individual property owner #1 and the ministry;
- Record 2 – Agreement as to compensation and possession for land required by the Minister of Transportation, between individual property owner #2 and the ministry; and
- Record 3 – Property purchase agreement between individual property owner #2 and the ministry.

## **ISSUES:**

- A. Is the information at issue “personal information” as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) of the *Act* apply to the information at issue?

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### ***A. Is the information at issue “personal information” as defined in section 2(1) of the Act and, if so, to whom does it relate?***

[10] The mandatory personal privacy exemption in section 21(1) of the *Act* only applies to “personal information.” As a result, it must be determined whether the purchase price information in the records at issue is “personal information,” and if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

(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,**

[emphasis added]

[11] Previous IPC orders have found that the purchase price of a property sold by an identifiable property owner constitutes that individual's "personal information."<sup>3</sup> In the circumstances of this appeal, the information at issue is the purchase prices that the ministry paid to two property owners for their land. In my view, these purchase prices are information relating to "financial transactions in which the individual has been involved," as stipulated in paragraph (b) of the definition of "personal information" in section 2(1).

[12] However, to qualify as "personal information," the opening words of the definition of that term in section 2(1) also require that the information be about an "identifiable individual." The test for making this determination is whether it is reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup> Although the appellant is only seeking the purchase price information in the records, she already knows the names and addresses of the property owners who engaged in a financial transaction that resulted in the ministry purchasing their land. As a result, it is reasonable to expect that these property owners may be identified if the purchase price information is disclosed. In short, I find that the purchase price information in the records is about two identifiable individuals.

[13] Finally, in some circumstances, it is possible that purchase price information may fall outside the definition of "personal information" if it is associated with a property owner in their professional, business or official capacity, rather than their personal capacity. Previous IPC orders have found 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 a professional, official or business capacity will not be considered to be "about" the individual.<sup>5</sup> However, 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>6</sup>

[14] In the circumstances of this appeal, there is no evidence before me to suggest that the purchase price information in the records is associated with the property

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<sup>3</sup> See note 1.

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

<sup>5</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>6</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

owners in a professional, official or business capacity. In the absence of such evidence, I find that the purchase price information is associated with these property owners in their personal capacity.

[15] In summary, I find the purchase price information in the records is the “personal information” of the two property owners identified in the records. I will now turn to determining whether this information is exempt from disclosure under section 21(1) of the *Act*.

## **PERSONAL PRIVACY**

### ***B. Does the mandatory exemption at section 21(1) of the Act apply to the information at issue?***

[16] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which states:

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

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[17] The factors and presumptions in sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f). Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[18] Previous IPC orders<sup>7</sup> have found that the purchase price of a property sold by an identifiable individual falls within the presumption in section 21(3)(f), which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[19] In the circumstances of this appeal, the information at issue is the purchase prices that the ministry paid to two property owners for their land. In my view, this information falls within several items listed in section 21(3)(f) because it describes

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<sup>7</sup> See note 1.

those individuals' finances, income, assets and financial history or activities. I find, therefore, that disclosing the purchase price information in the records is presumed to constitute an unjustified invasion of their personal privacy under section 21(3)(f).

[20] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to constitute an unjustified invasion of another individual's personal privacy. The Ontario Divisional Court has found that once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.<sup>8</sup> It cannot be rebutted by one or more factors or circumstances under section 21(2).<sup>9</sup>

[21] Given that I have found that the section 21(3)(f) presumption applies to the purchase price information in the records, I find that this presumption cannot be rebutted by any of the factors in section 21(2). In addition, I find that none of the circumstances listed in paragraphs (a) to (d) of section 21(4) applies to this personal information. Finally, I find that the public interest override in section 23 cannot apply, because the appellant has a private rather than a public interest in seeking this information.

[22] In short, I find that disclosing the purchase price information in the records to the appellant would constitute an unjustified invasion of the property owners' personal privacy, and this information is exempt under section 21(1) of the *Act*.

[23] Finally, I will address the appellant's brief representations, which state:

I cannot understand why the [ministry] and the other individuals are refusing to give this information to me.

In this instance where is the transparency that the Government and Premier Wynne have stated that the public is entitled to access, and just to ask.

The Government [and the ministry] paid taxpayers monies to these individuals for their property. If this was handled by a Realtor, all you would have to do is inquire and they would tell you the price. Why the secrecy?

[24] Although the appellant raises some reasonable transparency arguments with respect to whether the property price information of the two property owners in the records should be disclosed to her, the *Act* has both a transparency purpose and a privacy protection purpose, which are set out in sections 1(a) and (b), which state:

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<sup>8</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>9</sup> *Ibid.*

The purposes of this Act are,

(a) to provide a right of access to information under the control of institutions in accordance with the principles that,

(i) information should be available to the public,

(ii) necessary exemptions from the right of access should be limited and specific, and

(iii) decisions on the disclosure of government information should be reviewed independently of government; and

(b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

[25] The right of access set out in section 1(a) is also subject to necessary exemptions that are limited and specific, including the mandatory personal privacy exemption in section 21(1). Although the appellant believes that the purchase price information in the records should be accessible to her, this information constitutes the personal information of the two property owners and for the reasons set out above, is exempt from disclosure under section 21(1).

[26] Finally, it is important to note that previous orders have found that the public availability of purchase price information in the records of the land registry office, which falls under the Ministry of Government and Consumer Services, does not necessarily abrogate the application of section 21(1) to the same information in other records held or created by a different institution.<sup>10</sup> The purchase price information relating to the property identified by the appellant does not currently appear to be publicly available elsewhere, but even if it was, section 21(1) would still apply to such information as it appears in the records at issue in this appeal.

## **ORDER:**

I uphold the ministry's decision to deny access to the purchase price information in the records. The appeal is dismissed.

Original Signed by: \_\_\_\_\_

Colin Bhattacharjee  
Adjudicator

\_\_\_\_\_ March 28, 2018

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<sup>10</sup> See note 1.