

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER PO-4131-R

Appeal PA17-550

Order PO-4084

Ministry of Natural Resources and Forestry

March 30, 2021

Summary: This is an IPC-initiated reconsideration to address issues raised by the Ministry of Natural Resources and Forestry regarding the records it was ordered to disclose in Order PO-4084. In this order, the adjudicator finds that there were accidental errors and omissions in the decision and clarifies the record numbers associated with the records that the ministry was ordered to disclose to the requester.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F. 31, as amended, section 17(1), IPC's *Code of Procedure*, section 18.01.

Orders Considered: Order PO-4084.

OVERVIEW:

[1] On November 10, 2020, I issued Order PO-4084 in which I dismissed a third party appellant's appeal of a decision by the Ministry of Natural Resources and Forestry (the ministry). The ministry's decision was to disclose certain specified records relating to a proposed hydroelectric generating facility known as the Bala Falls Project under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester did not appeal the ministry's decision to withhold some of the information in the records, but the third party appellant objected to the ministry's decision to disclose certain portions of the specified records and claimed that section 17(1) (third party information) of the

Act applied to the records at issue, which were comprised of a Statement of Qualifications, emails and two Licences of Occupation. I disagreed and ordered the ministry to disclose the records at issue to the requester.

[2] After Order PO-4084 was issued, the ministry contacted this office to explain that it was unsure which specific records it had been ordered to disclose to the requester. The ministry advised that the numbering system it used to identify the records at issue was not the same as the numbering system used by the third party appellant. In Order PO-4084, I used the third party appellant's numbering system and the ministry advised that it did not have access to that numbering system so it could not identify which records it was ordered to disclose.

[3] The ministry also advised that some of the records that were listed as being at issue in the Notice of Inquiry it received did not appear to be addressed in Order PO-4084. It further specified that it appeared that I may have ordered the disclosure of some portions of records it had decided to withhold and that the requester did not appeal. The ministry asked for clarification on how to proceed.

[4] After reviewing the appeal file, Order PO-4084, and the ministry's representations, I formed the preliminary view that I should reconsider Order PO-4084 on the basis that it contained accidental errors and omissions. I wrote to the ministry explaining this, provided the ministry with the third party appellant's index of records, and stated that it was my preliminary view that I should issue a reconsideration order as follows:

- Clarifying that the record numbers mentioned in the order are those referred to in the third party appellant's index;
- Ordering the disclosure of the records that the third party appellant stated it does not object to being disclosed; and
- Addressing the pages of records included in Order PO-4084 that the ministry had decided to withhold.

[5] The ministry confirmed receipt of the third party appellant's index and advised that it resolved the confusion about the numbering of the records. However, it confirmed that it was still not clear which records it was being ordered to disclose.

[6] For the reasons that follow, I find that Order PO-4084 should be reconsidered to rectify accidental errors and omissions regarding how the records are identified and which specific records I ordered disclosed.

DISCUSSION:

[7] The sole issue in this order is the reconsideration of Order PO-4084 to address

the discrepancies in the numbering of the records and to provide the ministry with clarity on which specific records it must disclose.

[8] The rules governing a reconsideration of a decision issued by the Information and Privacy Commissioner (IPC) are set out in section 18 of the IPC's *Code of Procedure* (the *Code*). Under section 18.03 of the *Code*, the IPC may reconsider a decision at the request of a person who has an interest in the appeal or on the IPC's own initiative.

[9] Section 18.01 of the *Code* sets out the grounds for reconsideration. It states:

The IPC may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

[10] I have reviewed the records at issue in Order PO-4084, as well as all of the representations of the parties and I have concluded that there are accidental errors and omissions in Order PO-4084.¹ While none of the parties have requested that I reconsider Order PO-4084, I have determined that it is necessary to do so to provide clarity on what specific records the ministry must disclose.

[11] This reconsideration order will address the following errors and omissions in Order PO-4084:

- Certain pages of records were accidentally listed in the Notice of Inquiry sent to the parties that were, in fact, not at issue in the appeal;
- Records that I ordered disclosed did not have the appropriate numbering for the ministry identify the records;
- Certain pages of records at issue were ordered disclosed in error, the error being that these pages were not at issue; and
- I did not include a direction for the ministry to disclose records that the third party appellant consented to the disclosure of during the inquiry process.

[12] The Notice of Inquiry for this appeal sent to the ministry listed the following records as being at issue:

¹ Order PO-4084 deals with the issues that were on appeal in appeal file number PA17-550. When I refer to the "appeal" in this order, I am referring to appeal PA17-550.

- A0302300 - page 106
- A0302318 - page 114
- A0302593 - pages 147-148
- A0303456 - pages 404-405, 407-419²
- A0303506 - pages 609-610, 612
- A0303507 - pages 621-622, 631-632, 639-640
- A0303743 - pages 1028-1046, 1049, 1086-1087
- A0303754 - pages 1207-1265, 1273, 1277, 1339-1341
- A0303824 - pages 1577-1579
- A0303827 - pages 1584-1586
- A0303870 - pages 1782-1785
- A0303885 - pages 1827-1828, 1833-1835
- A0303896 - pages 1861-1882
- A0303911 - pages 1904-1911
- A0304146 - page 2279
- A0304184 - pages 2563-2565, 2613-2618
- A0304189 - pages 2621-2624
- A0304191 - pages 2627-2628
- A0304192 - pages 2630-2632
- A0304336 - pages 3184-3196
- A0304405 - page 3298
- A0304407 - page 3304
- A0304442 - pages 3349 - 3350

² In the Notice of Inquiry, Record A0303456 was incorrectly listed as A0303506.

[13] In Order PO-4084, I provided the following description of the records at issue, which was originally used by the third party appellant in Appendix C of its representations:

Record Number	Description	Page Numbers	Exemption(s) Claimed by Third Party Appellant
10	Statement of Qualifications	1207-1223; 1229-1235; 1339-1431	Sections 16, 17(1), 18(1), and 20
13	Emails with the ministry attaching insurance information	1782-1785; 1787; 1793	Section 17(1)
15	License of Occupation	1861-1882	Sections 16, 17(1), 18(1), and 20
21	License of Occupation	3184-3196	Sections 16, 17(1), 18(1) and 20

[14] I upheld the ministry's decision that section 17(1) of the *Act* did not apply to any of the records in the third party appellant's chart above. I dismissed the third party appellant's appeal and ordered the ministry to disclose the records.

[15] After receiving a copy of Order PO-4084, the ministry notified this office that it had not received a copy of the third party appellant's representations during the inquiry process, and as a result, it could not reconcile the records numbered 10, 13, 15 and 21 with those listed in the Notice of Inquiry it received at the beginning of the inquiry for the appeal. As a result, the ministry said it was uncertain which records it was being ordered to disclose.

[16] To resolve this issue, I have provided a table below that displays the ministry's numbering system as well as the third party's numbering system.

Ministry Record Number	Page Numbers	Third Party Appellant Record Number	Third Party Appellant Description of Record
A0303754	1207-1223; 1229-1235; 1339-1431	10	Statement of Qualifications
A0303870	1782-1785;	13	Emails with the ministry
A0303896	1861-1882	15	License of Occupation

A0304336	3184-3196	21	License of Occupation
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[17] Some of the records listed in the Notice of Inquiry are not listed in the table above. This is because in its representations dated August 2, 2018, the third party appellant confirmed that it no longer opposed the disclosure of the following records, which were listed as Appendix B in its representations:

- A0302318, page 114;
- A0302593, page 148
- A0303456, page 404;
- A0303506, page 612;
- A0303754, pages 1224-1228, 1236-1265, 1273 and 1277;
- A0303827, page 1586;
- A0304146, page 2279;
- A0304184, page 2563;
- A0304405, page 3298;
- A0304407, page 3304;
- A0304442, pages 3349-3350.

[18] The ministry's decision was to disclose these records. Given that the third party no longer opposes disclosure, I will order the ministry to disclose them to the requester.

[19] Furthermore, later on during the course of my inquiry, the third party appellant advised that it also no longer opposed the disclosure of the following records:

- A0302300, page 106;
- A0302593, pages 147, 405;
- A0303456, pages 405-419;
- A0303506, pages 609-610;
- A0303507, pages 621-622, 631-632, 639-640;
- A0303743, pages 1028-1046, and 1049;

- A0303824, pages 1577-1579;
- A0303827, pages 1584-1585;
- A0303885, pages 1827-1828 and 1833-1835;
- A0303911, pages 1908-1911;
- A0304184, pages 2564-2565 and 2613-2618;
- A0304189, 2621-2624;
- A0304191, 2627-2628; and
- A0304192, 2630-2632.

[20] As with the pages of records listed in paragraph 17, the ministry's decision was to disclose these pages. Given that the third party no longer opposes disclosure, I will order the ministry to disclose them to the requester.

[21] Next, the ministry advised this office that pages 1086 and 1087 of Record A0303743 and pages 1904 to 1907 of Record A0303911 were listed as being at issue in the Notice of Inquiry but were not addressed by the third party in its representations or included in its Index, and were not addressed in Order PO-4084.

[22] This office contacted the third party appellant to seek its position on the disclosure of these pages. On January 22, 2021, the third party appellant consented to the disclosure of pages 1086 and 1087 of Record A0303743. Given that the ministry's decision was to disclose these pages, and where the third party does not object to their disclosure, I will order the ministry to disclose them to the requester.

[23] With regard to pages 1904 to 1907 of Record A0303911, the third party appellant advised this office that it did not have copies of those pages. This office followed up with the ministry and was advised that pages 1904 to 1907 of Record A0303911 may have been included in error in a list of records at issue that the ministry provided to a mediator from this office prior to the inquiry stage. The ministry confirmed that pages 1904 to 1907 relate to a different third party, and not the third party appellant in this appeal. The ministry confirmed that the third party to whom pages 1904 to 1907 relate was notified and consented to the disclosure of the pages. The ministry provided this office with a copy of that third party's consent to disclosure. Given that these pages do not contain any information that relates to the third party appellant, and where the third party to whom the information relates has consented to the disclosure of the three pages, I will order that the ministry disclose them to the appellant.

[24] Finally, as noted by the ministry in its communications to this office, in Order PO-

4084, I found that pages 1787 and 1793 of Record A0303870 were not exempt from disclosure and I ordered the ministry to disclose them. That decision was made in error. These pages, although mentioned in the third party appellant's representations, were not listed in the Notice of Inquiry and were not at issue in the appeal. Because pages 1787 and 1793 were not at issue, it was an error to order that the ministry disclose them and as such, I retract that order.

ORDER:

1. I order the ministry to disclose the following records, in accordance with its original decision, to the requester to the requester by **May 4, 2021** but not before **April 30, 2021**:
 - A0302300 - page 106
 - A0302318 - page 114
 - A0302593 - pages 147-148
 - A0303456 - pages 404-405, 407-419
 - A0303506 - pages 609-610, 612
 - A0303507 - pages 621-622, 631-632, 639-640
 - A0303743 - pages 1028-1046, 1049, 1086-1087
 - A0303754 - pages 1207-1265, 1273, 1277, 1339-1341
 - A0303824 - pages 1577-1579
 - A0303827 - pages 1584-1586
 - A0303870 - pages 1782-1785
 - A0303885 - pages 1827-1828, 1833-1835
 - A0303896 - pages 1861-1882
 - A0303911 - pages 1904-1911
 - A0304146 - page 2279
 - A0304184 - pages 2563-2565, 2613-2618
 - A0304189 - pages 2621-2624

- A0304191 - pages 2627-2628
 - A0304192 - pages 2630-2632
 - A0304336 - pages 3184-3196
 - A0304405 - page 3298
 - A0304407 - page 3304
 - A0304442 - pages 3349 - 3350
2. In order to verify compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the requester.
 3. The timeline noted in order provision 1 may be extended if the ministry is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any requests for extension.

Original signed by: _____
Meganne Cameron
Adjudicator

_____ March 30, 2021