



**Information and Privacy
Commissioner/Ontario**

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

ORDER P-516

Appeal P-9200741

Ministry of Municipal Affairs



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Ministry of Municipal Affairs (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of a petition submitted to the Ministry under section 178 of the Municipal Act requesting an inquiry into the administration of Arthur Township (the Township). The requester was the solicitor for the Township. The Ministry notified the individuals who signed the petition of the request, and after receiving their representations, provided the requester access to the introductory text of the petition. The Ministry withheld the remaining part containing the names and addresses of the individuals who signed the petition pursuant to section 21 of the Act. The requester appealed the Ministry's decision to deny access to the remaining portion of the record.

Mediation was not possible and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and the 54 individuals who signed the petition (the petitioners). Representations were received from the Ministry, the appellant and 18 petitioners. The remaining 36 petitioners did not respond to the Notice of Inquiry.

THE RECORD AT ISSUE:

The record at issue is a petition submitted to the Minister of Municipal Affairs under the provisions of section 178 of the Municipal Act which provides that "the Lieutenant Governor in Council, upon the recommendation of the Minister, may issue a commission to inquire into any of the affairs of any municipality ... ". The section further provides that a commission may be recommended "... upon the request in writing ... of not less than fifty electors of the municipality."

The introductory text of the petition, to which the appellant was given access, reads:

PETITION

We, undersigned electors of the Corporation of the Township of Arthur in the County of Wellington, request the Honourable David Cooke, Minister of Municipal Affairs to undertake an inquiry into the administration of Arthur Township.

The petition does not contain any other information beyond the introductory text, the names, addresses and signatures of the petitioners. The document was submitted to the Ministry with a covering letter dated March 5, 1992 and signed by two of the petitioners. This covering letter is not the subject of this appeal.

Upon receipt of the petition, Ministry officials met with a delegation of the petitioners, the Reeve and Clerk of the Township, municipal officials and councillors, and Township residents. These

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meetings were held separately. Concerns about the affairs of the Township were raised and discussed at these meetings, and at the conclusion of this process, in December 1992, Ministry officials issued a report which summarized the concerns identified at these meetings. The report recommended to the Minister that a commission of inquiry not be established. This report was given to the Township.

During the course of the Ministry's consideration of the petition, and before the report was issued, the Township asked to receive the full petition, but the Ministry refused to do so.

ISSUES:

The issues arising in this appeal are:

- A. Whether the record contains "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the record.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the record contains "personal information" as defined in section 2(1) of the Act.

"Personal information" is defined in section 2(1) of the Act, in part, as follows:

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

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (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;

The record contains the names, addresses and signatures of the petitioners. It also reveals the fact that the petitioners have signed a petition requesting the establishment of a formal commission of inquiry to investigate the affairs of the Township. In my view, this information is

recorded information about identifiable individuals and qualifies as personal information under section 2(1) of the Act. This personal information relates solely to the petitioners.

ISSUE B: If the answer to A is yes, whether the mandatory exemption provided by section 21 of the Act applies to the record.

Under Issue A, I found that the record contains the personal information of the petitioners.

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f). This section reads as follows:

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

if the disclosure does not constitute an unjustified invasion of personal privacy

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 21(2), (3), and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy. I have considered sections 21(3) and (4), and I find that none of the personal information at issue in this appeal falls within the ambit of these provisions.

Section 21(2) states, in part, as follows:

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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

...

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- ...
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

In interpreting section 21(2), consideration must be given to all the relevant circumstances of the appeal, not only the factors enumerated in the section.

In his representations, the appellant relies on Orders 171 and 172 to support disclosure of the record. He submits:

We are dealing with a repeat here of the issue and circumstances as experienced by the City of Belleville and addressed in Orders 171 and 172. The names on the petition in that case were requested but were refused in a partial access response. Belleville went through the same investigation process by Ministry staff and ultimate report prepared by Ministry staff upon which a decision whether to recommend a commission of inquiry or not was made by the Minister. As in the case of the Township of Arthur, this was all done while the petition was held under a veil of secrecy by the Ministry. In the Belleville case the Ministry released the text of the petition and the appeal related to the names of the petitioners. In essence, the same situation exists in the present appeal.

The Ministry claims that the circumstances of the present appeal are distinguishable from those that arose in Orders 171 and 172. It submits that in this appeal, the petition was signed by the petitioners under an assurance of confidentiality and its contents do not represent a public stand of the petitioners on the issue. The Ministry also states that it has received representations which indicate that the petitioners will be exposed to harm if their identities are disclosed. The Ministry's position is that in the circumstances of this appeal, disclosure of the record would result in an unjustified invasion of the personal privacy of the petitioners.

In support of its position, the Ministry claims that the factors listed under sections 21(2)(e) and (h) of the Act are present in the circumstances of this appeal.

With respect to section 21(2)(e), the Ministry states that it has received information from an independent source that physical threats have been levelled against one petitioner and that it believes there will be "significant risk of retaliation against [the] petitioners" because they signed the petition. In addition, the Ministry submits that in their small and closely knit community, the petitioners feel that their interests and future dealings with the Township Council will be jeopardized.

The petitioners who made representations objecting to the disclosure of the record expressed the same concerns. Some of them submitted that they would be exposed to pecuniary harm or other forms of retaliation from the Township if their names are disclosed. Although none of the petitioners stated that they fear physical harm to their persons, some have expressed fear that their properties may be damaged by individuals who disagree with their positions. Most of them say that they will be subjected to retaliatory action from the Township administrators.

The appellant submits:

We speculate that the Ministry, or possibly one or more of the petitioners, may submit that Section 21(2) (e) applies in this case for reasons such as the petitioners will be exposed unfairly to pecuniary or other harm because the council or others in the administration of the township will try to get revenge on them by making decisions in their official capacity which will not be in their best interests, or that they will somehow "get them". We would hope that any such contentions will be recognized as specious reasoning. First of all there are many safeguards against this in the Municipal Act, in our civil law, and in our criminal law and there is in any event no reasonable grounds for suggesting that anyone can blame the petitioners for anything. Secondly, subsection 21(2)(e) states that the individual must be "exposed unfairly to pecuniary or other harm" by the release of the personal information. The words which we have underlined indicate the broad range within which this subsection can be interpreted. The public character of this petition dictates that neither of these words are appropriate to the circumstances of the subject of this appeal. In fact our position is that both the unfairness and the harm have manifested themselves in the other direction as a result of the Ministry's refusal to release the full petition.

Having carefully reviewed the representations of the Ministry and the petitioners, and based on the evidence provided to me, I am not satisfied that there is sufficient evidence to support the view that petitioners will be exposed unfairly to pecuniary or other harm. I find, therefore, that section 21(2)(e) is not a relevant consideration in the circumstances of this appeal.

With regard to section 21(2)(h), many of the petitioners state they signed the petition in the privacy of their homes and on the understanding that their identities would only be disclosed to the Ministry.

The Ministry relies on the representations of the petitioners. It states: "The petitioners indicate that the petition was circulated in confidence". There is nothing on the petition or the covering letter to indicate that the petition was signed in confidence or that it was submitted to the Ministry in confidence. The Ministry states that "the Township could request a Commission of Inquiry, were one to be called, to verify formally that sufficient signatures existed, and to disclose identities. In this manner, and at the appropriate stage, those interested could know their 'accusers'".

I have not been provided with sufficient evidence that the petition was actually communicated to the Ministry on the basis that it was to be kept confidential or that the Ministry has promised such confidentiality. Having considered the representations of the parties and based on the evidence provided to me, I am unable to conclude that the personal information in the record was supplied to the Ministry in confidence. Therefore, I find that section 21(2)(h) is not a relevant consideration in the circumstances of this appeal.

The appellant's representations raise the applicability of section 21(2)(a) in the circumstances of this appeal. He submits:

Any elector should be able to hold the Minister and the Minister's bureaucrats accountable for what they did and for what they did not do over the nine month period. Some communication with the persons signing the petition would be essential to do this. For instance in the report prepared for the Minister by the Ministry investigators the bureaucrats state clearly that the "petition was too general in nature for the Ministry to act on." Nevertheless the Minister himself and his staff took actions over a nine month period. It is these actions which any elector in the municipality, or anyone in the township's administration, should be free to question with the benefit of full and complete knowledge of the petition.

...

The Ministry must understand that it can't undertake nine months of work at public expense which work they justify on the basis of a petition which they will not reveal to the public.

The Ministry states that section 21(2)(a) is not relevant in the circumstances of this appeal. It submits that the objective of subjecting the actions of the Ministry to public scrutiny "does not appear significantly impaired by non-release of the names." It concedes that the Township is not able to make inquiries directly of the petitioners, but it is willing to impart the information to the Township on how many of the individuals who signed the petition are "apparent electors". The Ministry takes the position that it has been open in its actions; that the Township is in possession of the text of the petition and the report of the Ministry and that it communicated with the Township throughout the course of the investigation.

In order to establish the relevance of section 21(2)(a), the appellant must provide evidence demonstrating that the activities of the Ministry have been publicly called into question, necessitating the disclosure of the identities of the petitioners in order to subject the activities of the Ministry to public scrutiny (Order P-273).

I have not been provided with any evidence demonstrating that the activities of the Ministry have been publicly called into question, nor that any party other than the appellant has expressed a concern about the activities of the Ministry. Having carefully considered the representations of all parties, it is my view that, in the circumstances of this appeal, section 21(2)(a) is not a relevant consideration.

Having reviewed the representations of the parties and the provisions of the Act, I find that none of the factors listed under section 21(2) apply in the circumstances of this appeal.

Although not listed under section 21(2), in my view, the public nature of the record at issue is a relevant consideration in the circumstances of this appeal. In my view, this unlisted factor favours the disclosure of the record. In Order 171, former Inquiry Officer John McCamus stated:

Petitions by their very nature, are not documents that have an aura of confidentiality. The signatories to a petition do so voluntarily. By including their name on a petition, a signatory takes a public stand with respect to the issue being petitioned for. Petitioners are aware that they are revealing personal information about themselves when they add their names to a petition. They also realize that the petition will be circulated and used in whatever manner is necessary in order to further the cause which is the subject of the petition.

Further, petitions are usually collected in a fairly public manner. Proponents of a petition often seek additional signatories in shopping malls, in front of public buildings or in door to door campaigns. Individuals are approached to add their names to the petition and are given the opportunity to read the body of the petition. Upon doing so, the individual, who may or may not eventually become a signatory, will have the opportunity to see the names, addresses and signatures of those who have already lent their support to the petition.

I agree with the above view. While there may be cases where, due to the sensitivity of their content, petitions may be circulated in secrecy and supplied to an institution in confidence, I find that this is not the case in the circumstances of this appeal. The individuals who signed the petition were exercising their right under the Municipal Act to request the appointment of a commission of inquiry, a public process governed by the Public Inquiries Act. Under these circumstances, in my view, it is not reasonable to expect that the petitioners identities would be kept confidential.

In conclusion, I agree with the views of former Inquiry Officer John McCamus who stated in Order 171:

The privacy interest to be weighed against disclosure, if it exists at all, is not of significant weight. The right to petition the government for redress of grievances is a valued and important part of our political tradition. It is no part of that tradition, however, that petitions should be created and, indeed, acted upon by the government under a veil of secrecy.

After carefully considering the entire circumstances of this appeal, the representations of the parties, the nature of the record and the provisions of the Act, it is my view that disclosure of the record would **not** constitute an unjustified invasion of the personal privacy of the petitioners.

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Accordingly, I find that the mandatory provision of section 21(1) does not apply in the circumstances of this appeal, and the record should be disclosed.

ORDER:

1. I order the Ministry to disclose the record to the appellant within 35 days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with the order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1 **only** upon request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

_____ August 17, 1993