



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER M-522

Appeal M-9400602

County of Grey



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>

NATURE OF THE APPEAL:

The appellant, a newspaper reporter, made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all Notices of Intent (the Notices) submitted to the County of Grey (the County) in the previous twelve months under the County's Tree By-law 3132-88 (the By-Law). The record consists of 253 Notices, and a blank copy of a Notice is attached as Appendix "A".

The County denied access to the Notices based on the following exemption:

- invasion of privacy - section 14(1).

During mediation, the appellant excluded from the scope of the appeal the information in the Notices following the headings, **Intended Starting Date** and **Name and Address of Person in Charge of Cutting**.

A Notice of Inquiry was provided to the appellant and the County. Because of the large number of persons whose interests could be affected by disclosure of the Notices (the affected persons) and the lack of addresses in many cases, 24 affected persons were selected as a representative sample and invited to provide representations on the issues arising in the appeal.

Due to the nature of the information at issue, the parties were asked to provide representations on whether section 10 of the Act (third party information), a mandatory exemption, applied to the Notices.

Representations were received from the appellant, the County and four affected persons.

PRELIMINARY MATTER:

THE RAISING OF ADDITIONAL DISCRETIONARY EXEMPTIONS LATE IN THE APPEALS PROCESS

Upon receipt of the appeal, this office provided the County with a Confirmation of Appeal notice. This notice indicated that the County had 35 days from the date of the notice (an expiry date was provided) to raise any additional discretionary exemptions not claimed in the decision letter. No additional exemptions were raised during this period.

Subsequently, in its representations, the County raised the application of the discretionary exemptions provided by sections 8(1)(a), (b) and (c) of the Act. By this time the expiry date provided in the Confirmation of Appeal had passed by over two months.

It has been determined in previous orders that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise discretionary exemptions not claimed in its original decision letter.

In Order P-658, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption(s)

is claimed late in the appeals process, a decision maker has the authority to decline to consider the discretionary exemption(s). I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

The County has provided no explanation for the delay in raising the additional discretionary exemptions. In my view, a departure from the 35-day timeframe is not justified in the circumstances of this appeal. Therefore, I will not consider the application of sections 8(1)(a), (b) or (c) in this order.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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 appellant submits that the information in the Notices is related to persons in their business rather than their personal capacities. The affected persons have not directly addressed this issue in their representations.

The County submits that the information at issue meets the definition of "personal information" in that it describes the affected persons' financial transactions.

The County has provided me with a copy of the Trees Act and By-Law No. 3132-88. Section 4(1) of the Trees Act authorizes the council of any county to pass by-laws restricting and regulating the destruction of trees by cutting and other means. The County enacted its By-Law in 1988 pursuant to this section of the Trees Act.

Section 2 of the By-Law is found under the heading, **EXCEPTION - GENERAL** and reads, in part:

This By-Law shall not:

- a) apply to any person or activity referred to in Section 5 of The Trees Act R.S.O. 1980, C.510 except subsection (1) (e) thereof.

...

Sections 5(1)(a) and (e) of the Trees Act read:

A by-law passed under subsection 4(1), or any predecessor thereof, does not

- (a) interfere with a right of a person who has been a registered owner of land for at least two years to cut trees thereon for the person's own use;
- (e) apply to trees growing in a woodlot that is two acres or less in area, unless the by-law provides expressly that it applies to trees in such a woodlot; [Section 4(2) of the By-Law addresses this provision]

Section 5(2) of the Trees Act reads:

The expression "own use" in clause (1)(a) shall be deemed not to include any sale, exchange or other disposition of the trees that are cut.

I conclude from these sections that Notices are to be submitted by persons intending to cut trees not for their own personal use, but for commercial or business purposes only.

In Order M-412, Assistant Commissioner Irwin Glasberg stated:

Based on the evidence before me, I find that the records refer to the individuals in a business as opposed to a personal capacity. For this reason, I conclude that the names do not constitute personal information for the purposes of the Act.

I adopt Assistant Commissioner Glasberg's reasoning. In my view, the information in the Notices relates to individuals in their business not personal capacities. It is also clear from reviewing the Notices that in some cases, the persons identified are companies or organizations, not individuals as described in the definition of "personal information".

Since I have found that the information in the Notices is not personal information, it follows that section 14(1) does not apply.

THIRD PARTY INFORMATION

For the Notices to qualify for exemption under section 10(1)(a), (b) or (c) of the Act the County and/or the affected persons 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 sections 10(1)(a), (b) or (c) will occur.

Failure to meet the requirements of each part of this test means section 10 will not apply.

With respect to the first part of the test, I find that the Notices contain commercial information.

The second part of the test has two elements. First, the information must have been **supplied** to the County and secondly, it must have been supplied **in confidence**, either implicitly or explicitly.

With respect to the first element, I am satisfied that the information contained in the Notices was supplied to the County.

In Order M-169, Inquiry Officer Holly Big Canoe made the following comments concerning the second element:

In regards to whether the information was supplied **in confidence**, part two of the test for exemption under section 10(1) requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly.

I adopt these comments for the purposes of this appeal.

The County states that the Notices were supplied in confidence and that:

Those persons filing Intents [Notices] do so with the full understanding that the information is being submitted to an enforcement officer of the County for his internal administrative purposes, and not as a matter of public record.

There is no indication in the By-Law or the Notices themselves that the information they contain will be considered confidential. Further, even if I were to assume that the use the County intended to make of the information was somehow relevant to the determination of confidentiality, I have been provided with no evidence to support the existence of "the full understanding". Therefore, I find that the Notices were not supplied **explicitly**, in confidence.

Turning to the question of implicit confidentiality, one affected person stated that as far as he was concerned, the Notice filed with the County was given in confidence. No further details as to the reasons for this belief were provided.

Another affected person submitted that the information contained in the record should be considered confidential as would normally be the case in business arrangements. Again, no further details were provided.

Beyond stating that the information in the Notices was supplied in confidence neither the affected persons nor the County have provided evidence to support their position. In addition, I have considered the nature of the information in the Notices. In my opinion, there is nothing about this information which would lead me to conclude that it was supplied **implicitly** in confidence.

Since I have determined that the Notices were not supplied either explicitly or implicitly in confidence, part two of the test has not been met and section 10(1) doesn't apply.

ORDER:

1. I order the County to disclose the Notices at issue to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the County to provide me with a copy of the Notices which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Wright
Commissioner

_____ May 11, 1995