



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

## **ORDER M-535**

**Appeals M-9500065, M-9500066, M-9500067, M-9500068,  
M-9500069, M-9500070, M-9500071, M-9500072  
and M-9500073**

**Regional Municipality of Niagara**



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## **NATURE OF THE APPEALS:**

These are appeals under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Regional Municipality of Niagara (the Region) received nine requests for access to records relating to various issues. The requests and the Region's decision in respect of each were as follows:

- (1) Under By-Law number 3270; Schedule "B"; Category or Heading: "Roads" in relation to the requester and his family.

Access was granted to two memoranda, dated April 16, 1993 and April 28, 1993.

- (2) The documenting in the recognized legal notebook of [a named Regional employee] of important events or information [relating to the requester or his wife] for the calendar year of 1993.

The recognized legal notebook of important events or information does not exist, however, partial access was granted to three pages from the log book of the named employee.

- (3) Documents including photographs and component layout, of the Alarm Panel located at the Lakeshore Road Pumping Station in Niagara-on-the-Lake.

No photographs exist and access was denied to records pertaining to the component layout of the alarm panel pursuant to section 8(1)(i) of the Act. The record at issue consists of a one page memorandum and a one page schematic regarding the alarm panel.

- (4) Documents which pertain directly to the portion of the alarm system that was installed in the William Street Pumping Station located in Niagara-on-the-Lake as it existed on September 22, 1993. The request included records detailing the component list, component layout schematics, electrical connection schematics for both power and signal circuits, logic ladder diagrams for a P.L.C. which may have been part of the alarm system, operating instructions in the form of system overview or other, and all photographs taken of the system after installation.

No recent photographs exist and access was denied to records responsive to the remaining parts of the request pursuant to section 8(1)(i) of the Act. The record at issue is 34 pages in length and consists of operating instructions, various schematics/diagrams and component/material lists.

- (5) Documents which detail the programming of the Allen Bradley SLC 150 P.L.C. which is a component part of the alarm system located in the Lakeshore Road Pumping Station in Niagara-on-the-Lake.

Access denied to the records pursuant to section 8(1)(i) of the Act. The record at issue is the programming diagram for the Allen Bradley SLC 150 P.L.C. and is seven pages in length.

- (6) Under By-Law number 3270; Schedule "E"; Category or Heading: "Correspondence - Confidential", (Administration) in relation to the requester and his family.

Access was granted to a memorandum dated February 23, 1993.

- (7) Under By-Law number 3270; Schedule "E"; Category or Heading: "Personnel - General", (Administration) in relation to certain complaints made by the requester.

Access was granted in full to two memoranda, dated March 11, 1993 and September 22, 1993. Access was granted in part to a memorandum dated March 8, 1993 with a memorandum dated January 11, 1993 attached. The Region claimed that the information to which access was denied was subject to the exemption provided by section 14 of the Act.

- (8) Under By-Law number 3270; Schedule "E"; Roadways Division; Category or Heading: "Maintenance Personnel" in relation to the requester and his family.

Records responsive to this request do not exist.

- (9) Under By-Law number 3270; Schedule "E"; Water and Pollution Control Division; Category or Heading: "Odours - Complaints, etc." in relation to the requester and his family.

Records responsive to this request do not exist.

The requester appealed these decisions, claiming that further records exist in response to Requests 1, 6 and 7 and that records do exist in response to Requests 2, 8 and 9. In addition, the requester appealed the denial of access to the records responsive to Requests 3, 4 and 5 and to the denial of access to the information which had been severed from pages 3 and 4 of the January 11, 1993 memorandum responsive to Request 7.

During mediation the appeal in relation to Request 7 was narrowed to include only the information which had been severed from page 3 of the memorandum dated January 11, 1993.

Notices of Inquiry were sent to the Region, the appellant and to one individual (the affected person) whose interests might be affected by the outcome of the appeal in relation to Request 7. Because it appeared that the portions of the record responsive to Request 7 could contain the personal information of the appellant, the Notice of Inquiry also raised the possible application of section 38(b) of the Act (invasion of privacy). Representations were received from the appellant and the Region.

## **DISCUSSION:**

### **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records to which he is seeking access and the Region indicates that responsive records do not exist, it is my responsibility to ensure that the Region has made a reasonable search to identify any records which are responsive to the request. In my view, the Act does not require that the Region prove to the degree of absolute certainty that such records do not exist. However, in order to properly discharge its obligations under the Act, the Region must provide the Commissioner's office with sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate records responsive to the request.

The appellant contends that reasonable searches were not conducted by the Region for records responsive to Requests 1, 2, 6, 7, 8 and 9 and he has provided me with his submissions in support of this position.

The representations of the Region include the affidavits of the Deputy Clerk of the Region who is also the Region's Freedom of Information and Privacy Co-ordinator (the Co-ordinator). The Co-ordinator describes the steps taken to conduct the search for and locate relevant records which are responsive to the appellant's requests.

The Co-ordinator states that she personally searched all files which may contain responsive records, including those maintained by the Legal Department and the Environmental Services Division, the Director's and Central Records files of the Public Works Department. In addition, she spoke to several Region staff members who assisted her in conducting the searches and none of these individuals had any further records nor were they aware of any further existing records.

I have carefully reviewed the representations of both parties, the supporting documentation and the affidavits and I am satisfied that the Region has taken all reasonable steps to locate records responsive to Requests 1, 2, 6, 7, 8 and 9.

### **SECURITY**

Section 8(1)(i) of the Act reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

In my view, the phrase "could reasonably be expected to" in section 8(1) of the Act requires that a reasonable expectation of probable harm exist should the records be disclosed.

The records in Requests 3, 4 and 5 contain information about the components, layout and programming of the automated systems at the pumping stations, which are used to control the mechanical equipment and the alarming systems. The Region indicates that disclosing these records would provide a member of the public the opportunity to alter pump set-points, electrical controls and the alarm system. The Region confirms that harm to the equipment, the environment and residents in the area could occur if these systems are altered.

I have carefully reviewed the evidence before me and I am satisfied that sufficient evidence has been provided to demonstrate that disclosure of the information in these records could reasonably be expected to result in the harm described in section 8(1)(i) of the Act.

## **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the undisclosed information found on page 3 of the January 11, 1993 memorandum responsive to Request 7 and I find that it contains the personal information of the appellant and the affected person.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and another individual and the Region determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Region has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. The Region cites the following provision which, if applicable, weighs in favour of privacy protection:

- disclosure may unfairly damage the reputation of any person referred to in the record (section 14(2)(i) of the Act)

The appellant provides his reasons and arguments in favour of disclosure of the record at issue, but has asked that I not disclose the specifics in this order.

Having reviewed the representations and the record, I have made the following findings:

- (1) Disclosure of the information relating to the affected person would not unfairly damage the reputation of the affected person and, therefore, section 14(2)(i) is a not relevant consideration for this information.
- (2) None of the other factors listed in section 14(2) of the Act which would weigh in favour of privacy protection are relevant in the circumstances of this appeal, and I have not been provided with any other arguments regarding unlisted factors which would favour privacy protection.
- (3) The submissions provided by the appellant support disclosure of the record.

After balancing the factors raised by the appellant and the privacy interests of the affected person, I find that the considerations which favour disclosure of the record responsive to Request 7 outweigh those which would protect the privacy interests of the affected person. Therefore, I am not satisfied that, in the particular circumstances of this case, disclosure of the personal information of the affected person would result in an unjustified invasion of personal privacy, and section 38(b) does not apply.

**ORDER:**

1. I am satisfied that the Region's searches for records responsive to Requests 1, 2, 6, 7, 8 and 9 were reasonable.
2. I uphold the Region's decision to apply section 8(1)(i) of the Act to the records responsive to Requests 3, 4 and 5.
3. I order the Region to disclose page three of the January 11, 1993 memorandum (responsive to Request 7) in its entirety to the appellant within thirty-five (35) days after the date of this order but not before the thirtieth (30th) day after the date of this order.
4. In order to verify compliance with this order, I reserve the right to require the Region to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 3.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ May 26, 1995