



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

## **ORDER M-785**

Appeal M\_9600006

Town of Gravenhurst



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## NATURE OF THE APPEAL:

The Ontario Municipal Board (the OMB) directed the Town of Gravenhurst (the Town) to release records respecting the Town's Comprehensive Zoning By-law 94-54 to the appellant in connection with a matter before it in which the appellant and the Town are parties. The OMB directed that the records were to be released in accordance with the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Town identified 17 responsive records, and denied access to portions of each record pursuant to section 14(1) of the Act (invasion of privacy).

The appellant filed an appeal of the Town's decision with the Commissioner's office. Subsequently, the Town located two additional records and issued a revised decision letter in which it indicated that portions of these two records were also exempt under section 14(1). The Town indicated further that portions of two records identified in its original decision were withheld pursuant to section 10(1) of the Act (third party information) in addition to the originally-claimed section 14(1).

The Town provided this office with a list of four hundred individuals and/or business entities whose information occurs in the various records (the affected parties). These four hundred affected parties were advised of the appeal by letter and invited to communicate with the Commissioner's Office. Four communications were received in response to this letter explicitly opposing any release of information. Many more expressed a desire for more information and were apprised of the general facts of the appeal.

A Notice of Inquiry was sent to the Town, the appellant and the 113 affected parties who expressed an interest in participating in the appeal.

Representations were received from the Town and nineteen of the affected parties. The appellant did not submit representations.

The records at issue fall into the following categories:

- Records relating to the Town's waterfront property usage surveys (Records 1, 2, 3 and 9);
- Correspondence (Records 6, 7, 13, 15, 16, 17, 18 and 19);
- Circulation lists (Records 4, 5, 8, 10, 11, 12 and 14).

## DISCUSSION:

### THIRD PARTY INFORMATION

Records 1 and 2 contain the names, addresses, and detailed business information and descriptions of waterfront commercial properties in the Gravenhurst area. The Town has stated an intention to withhold the names and precise locations of the various businesses included in the survey but has decided to disclose the detailed business information, descriptions and proposed

facilities and expansion information in these records. Despite this stated intention, however, the Town's representations appear to focus primarily on information which pertains to future expansion plans of the businesses as identified in the surveys. I note that the Town has not yet disclosed the records to the appellant. As section 10(1) is a mandatory exemption, I have reviewed and considered all of the information contained in Records 1 and 2.

Records 1 and 2 include survey results for **inactive** businesses which are being used as private residences or recreational properties. Survey results for such properties will be considered in my discussion of "Personal Information" and "Invasion of Privacy" below.

The Town relies on sections 10(1)(b) and 10(1)(c) of the Act to withhold the names and precise locations of the various businesses. These sections read:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

The Town and/or the affected parties share the burden of proving that each element of this section has been met. None of the affected parties have made representations concerning the applicability of section 10(1) of the Act.

### **Type of Information**

Record 2 consists of surveys which were completed by businesses operating on waterfront properties. The survey contains information about the property owner and address or location of the business, the name of a contact person for the business and the telephone number at which that person can be reached, and six questions about the business operation. The first four questions pertain to the current operations, and include questions concerning the operating name of the business, the length of time the business has been in operation, the type of business being operated and specifics about the facilities and the property. Question five requests information about future expansion of the business and question six provides for additional comments.

Record 1 is a table which sets out the results of the surveys referred to above.

The Town indicates that the records contain commercial/financial information with regard to future expansion only. As I noted above, however, I will consider whether the exemption in section 10(1) applies to any or all of the information contained in Records 1 and 2.

It has been established in a number of previous orders that the term “commercial information” relates solely to the buying, selling or exchange of merchandise and services (Orders 47 and M\_29). In general, the term “financial information” refers to information regarding money and its use or distribution (Orders 47 and 80). I agree with these definitions and adopt them for the purposes of this appeal.

I find that none of the information in the records qualifies as “financial information”. In my view, the information contained in Records 1 and 2 pertains generally to the operations and services provided by the businesses identified in the records. Much of this information describes the current business operations of these businesses, while other portions relate to their future expansion plans. I find that both Records 1 and 2 contain information about the commercial operation of the businesses referred to in them regarding the buying, selling or exchange of merchandise or services, and thus qualify as “commercial information”.

### **Supplied in Confidence**

The Town and/or the affected parties must demonstrate that the records were supplied to the Town and that they were supplied in confidence, either explicitly or implicitly.

The Town’s representations include a copy of a letter which the Town sent to the surveyed businesses regarding its process in preparing a new Comprehensive Zoning By-law. The Town attached a copy of the survey to each letter and asked that it be completed and returned to the Town. Of particular interest to the Town was information relating to existing and potential expansions to waterfront resort operations. The letter states that “information will be kept strictly confidential and will only be used for the purposes of the new By-law”.

The surveys themselves do not contain a confidentiality provision, nor have any of the businesses indicated on them that the information was supplied in confidence. However, given the assurances by the Town in its covering letter, I am satisfied that the businesses which submitted information in response to the survey supplied such information to the Town implicitly in confidence.

### **Harms**

The Town submits that the release of information which would disclose the proposed or contemplated expansion plans of the businesses which responded to the survey may result in similar information no longer being supplied to it where it is in the public interest that similar information continue to be so supplied (section 10(1)(b) of the Act). Further, the Town states that, in order to properly perform its duties, it must be able to collect this type of information on an ongoing basis. The Town also submits that access to this information by a competitor could result in undue loss or gain to the businesses identified in the records (section 10(1)(c) of the Act).

In my view, the information relating to current business operations is information which would be readily observable to anyone using the facilities, or would be on file in the municipal assessment office. Moreover, much of this is information which commercial operations offering such services would likely make available to the public in marketing their businesses.

Accordingly, it is not reasonable to expect that any of the harms in section 10(1) would be realized should this information be disclosed. This information is contained in the top portion and questions one to four and six of Record 2 and the first six columns of Record 1.

This situation is different, however, with respect to information regarding future plans. I agree with the Town that disclosure of information respecting future business plans could result in undue loss to the businesses which have provided the information in confidence, particularly if such information were to make its way into the hands of a business competitor.

Accordingly, the third part of the test has been met with respect to this information, and section 10(1)(c) applies to the portions of Records 1 and 2 which refer to future business plans. Accordingly, this information is properly exempt from disclosure. This information occurs in response to question five of the surveys (Record 2) and is described in two columns of Record 1 entitled "Proposed Facilities" and "Proposed Expansion (in square metres)".

## **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. The portions of Records 3-19 which have been withheld from the appellant consist of the names and/or addresses and telephone numbers of identifiable individuals referred to in these records. The Town indicates that portions of Records 1 and 2 also contain information about identifiable individuals. This information consists of the name and telephone numbers of contact persons for active businesses in Record 2, and the name, address and telephone numbers of the owners of former commercial properties which are currently being used as personal residential or recreational properties. These properties are listed as **inactive** businesses in Records 1 and 2. I will discuss each category of records more fully below.

### **Correspondence Records 6, 7, 13, 15, 16, 17, 18 and 19**

The correspondence, which comprises records 6, 7, 13, 15, 16, 17, 18 and 19, contains or refers to the personal views and concerns expressed by identifiable individuals regarding proposed zoning and land use amendments and as such would qualify as personal information when coupled with the names and addresses of the relevant individuals. As I noted above, the Town intends to withhold the names and addresses of these individuals and to disclose the contents of the correspondence to the appellant. I find that the names and addresses of the individuals referred to in the correspondence qualifies as personal information. In my view, however, once the names and addresses have been removed from these records, the remaining information would not reveal the identity of these individuals. Accordingly, the content of the correspondence does not qualify as personal information and section 14(1) does not apply to it.

### **Survey Records 1, 2, 3 and 9**

Record 2 contains names and telephone numbers of individuals who can be contacted by the Town for clarification of the survey results. The Town indicates that the telephone numbers are the home numbers of the contact persons. Accordingly, I find that the telephone numbers qualify as the personal information of the named individuals.

With respect to the names of contact persons for the **active** businesses which responded to the surveys found in Record 2, however, I find that this information appears in the context of these individuals' employment or business responsibilities and falls outside the scope of personal information.

Record 3 consists of residential waterfront surveys which contain detailed information about several hundred residential waterfront properties and their owner/occupants' views on certain zoning issues. In this record, the names, addresses and telephone numbers of respondents have been withheld from the appellant. The withheld portions of the surveys are the personal information of the individuals to whom they relate. Similar to my findings above, once the names and addresses have been removed from these records, the remaining information would not reveal the identity of these individuals. Accordingly, the content of the surveys does not qualify as personal information and section 14(1) does not apply to it.

As discussed above, Records 1 and 2 contain survey results for **inactive** businesses which are being used as private residences or recreational properties. These results are in my view analogous to the residential waterfront survey results and the names, addresses and telephone numbers of **inactive** businesses referred to in Records 1 and 2 are the personal information of the individuals to whom they relate.

#### **Circulation lists Records 4, 5, 8, 10, 11, 12 and 14**

Records 4, 5, 8, 10, 11, 12 and 14 are lists of individuals and/or businesses which were to be informed about the by-law, to attend at Town meetings, to be notified of public meetings, and so forth. The Town is prepared to release information about businesses. It has withheld only the names, addresses and telephone numbers of private individuals in these records. In my view, such information is the personal information of the individuals to whom it relates.

In summary, I find that, except for the names of contact persons for active businesses in Record 2, the withheld portions of the records described above all contain the personal information of identifiable individuals. None of the records contain information which pertains to the appellant.

#### **INVASION OF PRIVACY**

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information, unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy. 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 appellant did not make representations in response to the Notice of Inquiry. Having found that the records contain information which qualifies as personal information of individuals other than the appellant, and in the absence of any representations weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply. Accordingly, the portions of all records which I have found to contain personal information are properly exempt from disclosure pursuant to section 14(1) of the Act.

**ORDER:**

1. I uphold the decision of the Town to withhold the personal information in Records 3-19, the telephone numbers of contact persons in Record 2, and information with respect to **inactive** businesses in private, residential or recreational use in Records 1 and 2.
2. I order the Town **not** to disclose the business plan information contained in Records 1 and 2, which is found in the columns headed "Proposed Facilities" and "Proposed Expansion" in Record 1 and the answer to question five in Record 2.
3. I order the Town to disclose to the appellant the remaining information for **active** businesses in Records 1 and 2, by sending him a copy of this information not later than **July 17, 1996** and not before **July 12, 1996**.
4. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the portions of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ June 12, 1996