



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

ORDER P-1290

Appeal P-9600285

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of Environment and Energy (the Ministry). The request was for copies of the reviews of the Dufferin Waste Landfill Study submitted by Ministry employees and the names and titles of the individuals who provided the reviews. The Ministry denied the requester access to the records identified as responsive to the request, based on the following exemptions:

- advice or recommendations - section 13(1), and
- invasion of privacy - section 21(1)

The Ministry subsequently disclosed the names of the individual reviewers and the Ministry branch where each works. The Ministry also invited the appellant to inspect documents relating to the Dufferin Landfill site which contain the Ministry's co-ordinated comments.

The appellant appealed the Ministry's decision with respect to the denial of access to the individual review comments and the individual review team members' titles.

Two sets of records have been identified as responsive to the request:

1. One page listing the reviewers' names, their academic qualifications and their titles within the Ministry (Record 1). The Ministry claims that section 21(1) of the Act applies to the reviewers' academic qualifications.
2. Sixty pages containing comments from the various reviewers (Record 2). The Ministry has applied the section 13(1) exemption to this record.

This office provided the appellant and the Ministry with a Notice of Inquiry. Written representations were received from the Ministry.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. The Ministry submits that the academic qualifications of each reviewer are personal information because it represents the "educational...history" of the individuals listed. I agree. I find that the academic qualifications of the reviewers qualifies as their personal information.

Section 21(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

The Ministry submits that the disclosure of the academic qualifications of the reviewers found in Record 1 would constitute a presumed unjustified invasion of their personal privacy as the information relates to their educational history (section 21(3)(d)). The appellant has not made any representations concerning the application of section 21(1) to this information.

I find that the reviewers' academic qualifications relate to their educational history and disclosure of this information would constitute a presumed unjustified invasion of their personal privacy. The Ministry states that it does not object to the disclosure of the title of each reviewer. In my view, disclosure of the position title of each reviewer would not be an unjustified invasion of privacy, and this information does not qualify for exemption under section 21 of the Act.

Having reviewed the record, I am satisfied that section 21(4) has no application to the reviewers' academic qualifications. Furthermore, I have not been provided with any information to indicate that there exists a compelling public interest in the disclosure of the academic qualifications of the reviewers which would clearly outweigh the purpose of the section 21 exemption (section 23). Accordingly, I find that the academic qualifications of each reviewer are exempt under section 21 of the Act.

ADVICE OR RECOMMENDATIONS

The Ministry claims that Record 2 is exempt from disclosure pursuant to section 13(1). This section of the Act reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Previous orders of this agency have established that advice and recommendations, for the purposes of section 13(1), must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act.

The Ministry states that at the time of the submission of their comments, all reviewers were public servants employed by the Ministry. The reviewers provided suggested wording for changes to the Environmental Assessment Final Report for the Proposed Dufferin Waste Landfill Site. According to the Ministry, the reviewers provided their interpretations of the relevant statutory authorities, policies and procedures along with advice as to action to be taken to make the report acceptable to the Ministry. Their comments were communicated to an employee in the Ministry's Approval Branch who had the authority to accept or reject the comments provided. This individual then wrote the final version of the report.

I have carefully reviewed the information in Record 2 and find that it contains the recommendations of the reviewers. Further, I find that these recommendations amount to a

suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process. Accordingly, I find that the above information is properly withheld under section 13(1) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ November 12, 1996