



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

ORDER M-958

Appeal M_9700076

Haliburton, Kawartha, Pine Ridge District Health Unit



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NATURE OF THE APPEAL:

The appellant is the former owner of a trailer park. Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), an adjoining property owner (the requester) submitted a request to the Haliburton, Kawartha, Pine Ridge District Health Unit (the Health Unit). The request was for records relating to complaints about “waste material” allegedly leaking onto the requester’s property from the appellant’s septic bed. The appellant was the owner of the trailer park when the complaints were filed and investigated.

The Health Unit located a number of responsive records and notified the appellant of the request under section 21 of the Act. This notice invited the appellant to express his views concerning disclosure. The appellant responded to this notice, and objected to disclosure of the records. The Health Unit decided that the mandatory exemption in section 10(1) of the Act (third party information) did not apply, and informed the parties of its intention to disclose the records unless an appeal was filed within thirty days. The appellant appealed the decision to disclose.

The Health Unit also informed the requester that a fee of \$24.60 would be required in the event that the records are disclosed. This fee was not appealed.

This office sent a Notice of Inquiry to the appellant, the Health Unit and the requester. This Notice invited the parties to submit representations on the “third party information” exemption in section 10(1). In addition, the Notice invited representations on the exemptions relating to “unjustified invasion of personal privacy” in sections 14(1) and 38(b) of the Act. All three parties submitted representations.

The records at issue consist of four completed “Complaint/Request Report” forms, a letter from the Health Unit to the requester, a letter from the Health Unit to the appellant, a one-page inspection report, a Bacteriological Analysis of Water report from the Ministry of Health, and two pages of handwritten inspectors’ notes, both entitled “Report”.

DISCUSSION:

THIRD PARTY INFORMATION

Section 10(1) of the Act states as follows:

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,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

- (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; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Analysis of section 10(1) in previous orders indicates that, in order for the record to be exempt under this provision, each of the following three requirements must be satisfied:

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 section 10(1) will occur.

[Order 36]

Failure to satisfy any one of these three requirements means that the exemption does not apply.

The Health Unit submits that section 10(1) does not apply.

The requester's representations do not address the issue of whether this exemption applies; rather, they explain why he needs the information. In this case, the explanation given has no bearing on the application of this exemption.

Similarly, the appellant's representations do not address the issue of how the records qualify for exemption under this section; rather, they outline the history of his relations with the requester, which again has no bearing on the application of this exemption.

Therefore, my conclusions in relation to this exemption are based on my review of the records. I will consider each of the three requirements mentioned above, under separate headings.

Type of Information

Based on my review, I am not satisfied that the records contain any information which could reasonably be construed as a trade secret, commercial, financial or labour relations information.

This leaves the question of whether they contain technical or scientific information.

Former Assistant Commissioner Irwin Glasberg defined these terms in Order P-454, as follows:

In my view, technical information is information belonging to an organized field of knowledge which would fall under the general categories of applied sciences or mechanical arts. Examples of these fields would include architecture, engineering or electronics. While, admittedly, it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing. Finally, technical information must be given a meaning separate from scientific information which also appears in section 17(1)(a) of the Act.

In my view, scientific information is information belonging to an organized field of knowledge in either the natural, biological or social sciences or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of specific hypothesis or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from technical information which also appears in section 17(1)(a) of the Act.

I agree with these definitions. There is nothing in the records which might fall under the category of technical information as defined by the former Assistant Commissioner.

However, in my view, the Bacteriological Analysis of Water report prepared by the Ministry of Health relates to the observation and testing of specific conclusions and was undertaken by an expert in the field. I find that this record constitutes scientific information. None of the other information in the records falls under this category.

In summary, I find that only the Bacteriological Analysis of Water report meets requirement 1, since it contains scientific information.

Supplied in Confidence

Some of the records, such as the inspection reports, were not supplied to the Health Unit at all, but were instead created by Health Unit staff recording their observations. Moreover, I have not been provided with any evidence to suggest that any information at issue that **was** supplied to the Health Unit was supplied in confidence. There is no notation to this effect on the documents themselves. In addition, the Health Unit advises that, for a commercial establishment such as that formerly operated by the appellant, "... the Health Unit's practice would be to release such records under the [Act]". This statement strongly suggests that the Health Unit does not view the records as confidential when, as here, they relate to a commercial establishment.

I find that the second requirement is not met.

Harms

The appellant has not indicated which of the harms in section 10(1) could reasonably be expected to occur if the records are disclosed. Based on my review of the records, I am not satisfied that there is a reasonable expectation that any of them could occur if the records are disclosed.

I find that the third requirement is not met.

Summary

All three requirements must be met before section 10(1) can apply. The first requirement was met by one record, and not by the others. None of the records met the second or third requirement. I find that section 10(1) does not apply.

INVASION OF PRIVACY

The exemptions relating to “unjustified invasion of personal privacy” are found in sections 14(1) and 38(b) of the Act. These exemptions can only apply to personal information, which is defined in section 2(1) of the Act as “recorded information about an identifiable individual”. The definition goes on to list types of information which would be included in the category of “personal information”.

As noted earlier, the records at issue relate to a commercial establishment formerly operated by the appellant. In Order 16, former Commissioner Sidney B. Linden considered the issue of whether information about a business could qualify as “personal information”. He stated:

The use of the term “individual” in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended “identifiable individual” to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the Act as “personal information” when read in their entirety, lend further support to my conclusion that the term “personal information” relates only to natural persons.

Former Commissioner Linden went on to state in Order 113 that:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual’s personal information.

I agree with these views expressed by the former Commissioner. I note that the approach referred to in Order 113 was followed in several later orders. However, in the present case, the information clearly relates to a commercial operation, and I have not been provided with sufficient evidence to demonstrate that the information relates to an identifiable individual.

Accordingly, I find that the records do not contain any personal information. Therefore, the exemptions in sections 14(1) and 38(b) do not apply.

ORDER:

1. I uphold the Health Unit's decision to disclose the records.
2. I order the Health Unit to disclose the records to the requester by sending him a copy no later than **August 12, 1997** but not before **August 7, 1997**, subject to the proviso that the Health Unit may require payment of its fee of \$24.60 prior to disclosing the records.
3. In order to verify compliance with this order, I reserve the right to require the Health Unit to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
John Higgins
Inquiry Officer

_____ July 8, 1997