



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

ORDER M-1050

Appeal M_9700256

Town of Caledon



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NATURE OF THE APPEAL:

The Town of Caledon (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to a copy of a letter written by a named individual (the affected person) which was addressed to the Town's Mayor and Council. The Town located the requested letter. After seeking the views of the affected person, the Town decided to deny the appellant access to the letter on the basis that it was exempt from disclosure under the invasion of privacy exemption contained in section 14(1) of the Act.

The appellant appealed the Town's decision. This office provided the Town, the appellant and the affected person with a Notice of Inquiry. Because it appeared that the record contained the personal information of the appellant and other identifiable individuals, the parties were asked to consider the application of section 38(b) of the Act to the record, in addition to section 14(1).

Representations were received from all three parties to the appeal. The record at issue consists of a one-page letter dated June 25, 1997 from the affected person to the Mayor and members of the Town Council.

DISCUSSION:

PERSONAL INFORMATION/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 record at issue in this appeal and find that it contains the personal information of the affected person and his wife, the appellant and other identifiable individuals.

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 Town determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Town has the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's 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. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under

section 14(4) of the Act or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Town must consider the application of the factors listed in section 14(2), as well as all other considerations which are relevant in the circumstances of the case.

The Town submits that the record contains information which falls within the ambit of the presumptions in sections 14(3)(a), (d), (f) and (g). It indicates that the record:

- contains information which relates to the affected person's medical situation,
- describes the affected person's employment and educational history,
- contains information relating to the affected person's assets and financial activities, and
- consists of the affected person's personal evaluation of the land ownership dispute which is reflected in his letter.

The Town also asserts that the affected person submitted the letter to the Mayor and Council in confidence. Therefore, it argues that the consideration listed in section 14(2)(h) applies in the present circumstances. The affected person concurs that it was his intention that the letter be treated by the Town as confidential and that it not be made public.

The appellant has provided me with evidence of the nature and history of the on-going legal dispute between himself, his predecessor in title to the property and the affected person over the road allowance which is the subject of the record. Given the past history between these parties, he is understandably concerned that the affected person may be asserting a claim of a possessory title by way of adverse possession against certain lands owned by the appellant. The appellant is seeking access to the record in order to determine if the affected person is again asserting such a right. In my view, this raises the possible application of the consideration listed in section 14(2)(d).

The appellant also submits that by addressing his letter to the Mayor and Council for discussion in a public forum, any right the affected person may have to confidentiality in that document has been relinquished.

I have reviewed the submissions of the parties, as well as the record itself, and make the following findings:

1. Two excerpts from the letter contain information which falls within the ambit of the presumptions in sections 14(3)(d) and (f). These excerpts refer to the affected person's educational history and describe certain financial activities in which he and his wife were involved. The disclosure of this information is presumed, therefore, to result in an unjustified invasion of the personal privacy of the affected person.

I find that because section 14(4) is not applicable to these excerpts and the appellant has not claimed the possible application of section 16 of the Act, they are exempt from disclosure under section 38(b).

I have highlighted on the copy of the record which I have provided to the Town's Freedom of Information and Privacy Protection Co-ordinator those portions of the record which are exempt from disclosure under section 38(b). These portions of the record are **not** to be disclosed.

2. The presumptions in sections 14(3)(a) and (g) do not apply to any of the other information contained in the record. I find that the excerpt from the record referred to by the Town does not qualify as "medical information" within the meaning of section 14(3)(a). Similarly, the comments made by the affected person in the record cannot reasonably be characterized as "personal evaluations" for the purposes of section 14(3)(g). The information to which the Town has applied this section does not reflect the affected person's assessment of another individual by some measurable standard, as is required under this section (Orders P-447 and P-470).
3. I find that the affected person submitted the letter to the Town with an expectation that it would be treated in a confidential fashion, as contemplated by section 14(2)(h). The letter was addressed to the Mayor and Town Council and concerns an issue which has received a degree of public comment and exposure for many years. In my view, the affected person could reasonably have expected that the information contained in the letter which is subject to the presumptions would not be shared with the other parties to the dispute or discussed in a public forum. This is not the case, however, with the remaining information. Accordingly, I find that the section 14(2)(h) consideration does not carry any significant weight when balancing the privacy interests of the affected person against the access rights of the appellant, insofar as the information not subject to the presumption is concerned.
4. I further find that the consideration listed in section 14(2)(d) is applicable to the present situation. The appellant has been involved in litigation with the affected person over title to the property which is the subject of the record. The affected person has in the past asserted, and appears to continue to assert, a right to the property by adverse possession through his open and notorious use of the land. It is this claim of right by the affected person which the appellant is attempting to discredit. In my view, the disclosure of the information contained in the record is relevant to a fair determination of the appellant's rights with respect to the ongoing property dispute involving the parties as it may, assist the appellant in rebutting the affected person's claim to the property. I find that this is a significant consideration which weighs in favour of granting the appellant access to the subject record.
5. Balancing the factor weighing in favour of disclosure against the consideration which favours the protection of the affected person's privacy, I find that the privacy interests of the affected person are adequately protected through the severing of the information contained in the record which is subject to a section 14(3) presumption. Accordingly, I find that the appellant's right of access to the remaining information outweighs any

privacy considerations relating to the affected person which may exist in the other unsevered information.

In my view, once the personal information of the affected person which falls within one of the section 14(3) presumptions is removed from the records, the disclosure of the remaining information to the appellant would not result in an unjustified invasion of the personal privacy of the affected person. As noted above, I have provided the Town's Freedom of Information and Privacy Protection Co-ordinator with a highlighted copy of the record with a copy of this order. The highlighted portions are **not** to be disclosed.

ORDER:

1. I uphold the Town's decision to deny access to those portions of the record which I have highlighted on the copy provided to the Town's Freedom of Information and Privacy Protection Co-ordinator.
2. I order the Town to disclose to the appellant those portions of the record which are not highlighted by **January 23, 1998** but not before **January 19, 1998**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Town to provide me with a copy of the record which is disclosed in accordance with Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ December 19, 1997