



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-1754

Appeal PA-990345-1

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to “records detailing the amount of compensation paid” for a named piece of property which had been expropriated for the construction of a highway. The Ministry originally denied access to the responsive record, claiming the application of sections 18(1)(c) and (d) of the Act. The appellants appealed the Ministry’s decision to deny access to the responsive record.

During the mediation stage of the appeal, the Ministry amended its decision, advising the appellants that it no longer relied upon the exemptions in sections 18(1)(c) and (d). The Ministry also determined that the rights of another individual (the affected person) may be affected by the disclosure of the information contained in the record. Pursuant to section 28 of the Act, the Ministry notified the affected person, seeking this individual’s views on the disclosure of the requested information.

The affected person did not respond within the 30-day period prescribed in the Ministry’s notification. However, the Ministry again contacted the affected person, who objected to the disclosure of the requested information. The Ministry then advised the appellants that access to the responsive record was denied under section 21 of the Act, as the information requested was subject to the presumption described in section 21(3)(f) of the Act.

Also during mediation, the appellants agreed to limit the scope of their request to include only “the total fee set out in the expropriation agreement which is related to the request”.

I provided a Notice of Inquiry to, and received representations from, the appellants. In the circumstances, it was not necessary for me to seek representations from the Ministry or the affected person.

The only information at issue in this appeal is the dollar value of the compensation specified in a document entitled “Agreement as to Compensation & Possession for Land Required by the Ministry of Transportation.”

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. Paragraph (b) of the definition includes “information relating to financial transactions in which the individual has been involved”.

Disclosure of the information at issue would reveal the amount of compensation received by the affected person following the expropriation of his/her land by the Ministry. I find that this information “relates to financial transactions in which the affected person has been involved” and thereby constitutes his/her personal information within the definition of “personal information” in paragraph (b) of section 2(1).

The information does not relate to the appellants.

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

Section 21(1) of the Act prohibits the disclosure of personal information, except in certain circumstances. The appellants submit that the information at issue is public information, contained in a public record and subject to public scrutiny, thereby raising the possible application of the exception to the prohibition against the disclosure of personal information contained in section 21(1)(c). Another of these exceptions is found in section 21(1)(f). These sections state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The appellants refer to Schedule A of Ministry Directive QST-B-25 which they argue requires that the contents of property agreements be disclosed when requested. The Ministry submits, however, that disclosure would be in conflict with the Directive as the negotiations for the purchase of nearby lands for the highway project remain ongoing. The Ministry argues that the disclosure of the requested information would jeopardize the Ministry's ability to negotiate an equitable settlement with this landowner.

In my view, the personal information which remains at issue was not collected and maintained **specifically** for the purpose of creating a record available to the general public, as contemplated by section 21(1)(c). Rather, the personal information was collected and maintained for the purpose of documenting the terms of the sale of the affected person's property to the Ministry. Therefore, I find that section 21(1)(c) has no application in the present circumstances.

With respect to section 21(1)(f), sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that the only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption [Order M-1154; John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 (Div. Ct.)].

In its decision letter, the Ministry submits that section 21(3)(f) applies to the information at issue. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

In my view, the undisclosed information contained in the record describes the affected person's finances and financial activities because it refers to the dollar amount he/she received following the expropriation of his/her property by the Ministry. The disclosure of this information is, therefore, presumed to constitute an unjustified invasion of the personal privacy of the affected person.

The appellants make reference to the fact that, in their view, the information requested is public information and should be open to public scrutiny as it involves the disbursement of public money. I find that, although the appellants have not specifically referred to them, their submissions raise the possible application of section 21(2)(a) of the Act. This section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

However, as noted above, the Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors or considerations set out in 21(2). In the circumstances of this appeal, the application of the presumption in section 21(3)(f) has been established. Since none of the factors in section 21(4) is present and the appellants have not raised the possible application of section 23, the exemption in section 21(1) applies. It is not, therefore, necessary for me to consider the application of the factor described in section 21(2)(a) to the undisclosed information.

ORDER:

I uphold the Ministry's decision.

[IPC Order PO-1754/February 9, 2000]

Original signed by: _____
Donald Hale
Adjudicator

_____ February 9, 2000