



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1978

Appeal PA-010049-2

Ministry of Municipal Affairs and Housing



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NATURE OF THE APPEAL:

The Ministry of Municipal Affairs and Housing (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a member of the media for access to:

all memos, notes – including handwritten notes, briefing notes and information notes – all letters, faxes, fax cover sheets, telephone messages, records of verbal transactions, records of meetings, minutes of meetings and e-mails produced or received by [the Ministry] from April 1, 1998 to June 30, 1998 in connection with [a named] subdivision and golf course ...

The Ministry identified a number of responsive records and provided the requester with partial access. The Ministry denied access to the remaining records and partial records on the basis of one or more of the following exemption claims:

- section 13(1) – advice or recommendations
- section 19 – solicitor-client privilege
- section 21(1) – invasion of privacy

The requester (now the appellant) appealed the Ministry's decision.

During the course of mediation, several issues were resolved and the appellant was provided with access to additional records.

At the end of mediation, the only remaining unresolved issue was the application of section 21(1) of the *Act* to one severed line on page 42.

Once the appeal had moved to the adjudication stage, I sent a Notice of Inquiry initially to the Ministry and the individuals identified on the severed line (the affected persons). Only the Ministry submitted representations, which were provided to the appellant together with the Notice. The appellant submitted representations in response.

RECORD

The only record at issue in this appeal is one line contained on page 42. This line is included in a briefing note prepared by an official of the Ministry's Provincial Planning Services Branch that was attached to the agenda of the April 29, 1998 meeting of the Planning Advisory Committee of a named township. The agenda and all other portions of the briefing note have been provided to the appellant.

DISCUSSION

PERSONAL INFORMATION

The section 21(1) privacy exemption applies only to information that qualifies as “personal information”, as defined in section 2(1) of the *Act*. “Personal information” means, in part, recorded information about an identifiable individual, including the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual (paragraph (h)).

The Ministry submits that the information contained on the severed line is “of a personal nature between the two affected individuals and therefore falls under the definition of personal information ...”

The appellant, who is unaware of the precise content of the information on the severed line, speculates that it may relate to the relationship between the two affected persons. He states:

In its submissions, [the Ministry] indicates that two parties were contacted who might be affected by the release of this information. One imagines that this information might involve a relationship between these parties – a relationship, very clearly, the [author of the record] knew to be important enough to give a ‘heads up’ to other professional bureaucrats who may have had to deal with this file.

The appellant goes on to submit:

The relationship is indeed a “personal” one, but it was a “personal” one that involved an important public official and a government that was involved in a public decision about a public matter involving public policy. ...

Having reviewed the information contained on the severed line, I accept the Ministry’s position that it relates to the personal relationship between the two affected persons, both of whom are identified on the severed line, and I find that this constitutes the personal information of these two individuals as defined in paragraph (h) of the definition of “personal information”.

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. The only section with potential application in this appeal is section 21(1)(f), which reads:

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

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of privacy. Section 21(2) lists various criteria for the Ministry to consider in making this determination, and section 21(3) identifies certain types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

None of the various presumptions in section 21(3) are relevant in the circumstances of this appeal.

The Ministry's entire submissions on the application of section 21(1) consist of the following:

The Ministry submits that the criteria in [section] 21(2)(f) and (i) are relevant to the determination of the record at issue. These sections read as follows:

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,

- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The Ministry submits that none of the exceptions contained in section 21(4) apply.

The Ministry submits that disclosure of the information would constitute an unjustified invasion of personal privacy of the persons to whom the information relates and the mandatory exemption in section 21(1) applies; that is there are no factors in section 21 which weigh in favour of disclosure, and two factors, sections 21(2)(f) and (i), which favour privacy and weigh against disclosure.

The Ministry submits that sections 21(2)(f) and (i) are relevant considerations, and therefore provide an exemption not to release the records at issue. The Ministry also notes that both affected parties have been approached for their representations.

As mentioned previously, neither affected person submitted representations in response to the Notice of Inquiry.

The appellant disputes the relevance of the factors identified by the Ministry, and also identifies the factor listed in section 21(2)(a) as a relevant consideration. Section 21(2)(a) 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,

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

The appellant submits that the relationship between one of the individuals he presumes is identified in the severed line and certain senior elected officials is well known and acknowledged. He provides a number of newspaper articles that contain information in support of his position.

The appellant also submits:

As for the Ministry's contention that section 21(2)(f) and (i) apply, namely, that the information is "highly sensitive" and that its disclosure would "unfairly damage" the reputation of any person referred to in the record, I beg to differ. On the one hand, the author of the briefing note – destined to circulate among bureaucrats – didn't at all think that it was "highly sensitive" or damaging or even embarrassing. Otherwise, he wouldn't have written it into the briefing note in the first place. Quite to the contrary: he put it in because he knew very well that it was important for government bureaucrats to know of the relationship.

...

Would disclosure of this briefing note "unfairly damage" the reputations of the parties involved? I think not. All of the parties concerned appear to have openly confirmed their mutual friendships. ...

Whatever minor personal distress for the parties involved that could arise as a result of the disclosure of this briefing note, it is minor indeed compared to the damage that would be done by hiding it, in effect, sending a signal to bureaucrats already familiar with this briefing note that this kind of behaviour is to be tolerated.

As far as section 21(2)(a) is concerned, the appellant argues that the fact that the personal information contained on the severed line was included in a government briefing note to be read by civil servants involved in the decision-making process, makes it important that this information be disclosed in order to adequately subject the decision making process involving the golf course and subdivision planning approval to public scrutiny.

The appellant submits:

Personal relationships, favouritism or nepotism involving the holders of public office, should have no place in such a public process. But in this case ... there is clear evidence that in the halls of Queen's Park, it did.

...

The public has every right to know, indeed, must know, when bureaucrats under pressure or promise of favour, or for the sake of saving their own skin or that of others, or for whatever reason under the sun, cite the personal relationship that a private citizen, seeking government approval for a multi-million dollar project, has with a Minister of the Crown ...

The only information at issue in this appeal is one sentence contained on one line of a briefing note that has been disclosed to the appellant. Although this information constitutes the personal information of the two affected persons, I am not persuaded that this information is "highly sensitive" or that disclosure of the information would "unfairly damage the reputation" of either of the affected persons.

In order to be considered "highly sensitive" for the purpose of section 21(2)(f), it must be determined that disclosure of the information could reasonably be expected to cause "excessive personal distress to the subject individual (See Orders M-1053, P-1681 and PO-1736). The severed line contains nothing more than information widely reported in the press and apparently acknowledged by the individuals concerned. Neither of the affected persons has provided representations to support the Ministry's allegation that disclosure of this information would cause them "excessive personal distress" and, in my view, it is not reasonable to expect that information of this nature that is already on the public record could be considered "highly sensitive" if confirmed through the disclosure of the severed line in this appeal.

As far as section 21(2)(i) is concerned, I have been provided with no evidence that would raise the relevance of this factor. The information in the severed line does not relate to the "reputation" of either of the affected persons, and even if it could be argued that it does, there is nothing before me to suggest how information already widely discussed in other forums could somehow "unfairly" damage the reputation of any individual through disclosure to the appellant under the *Act*.

Accordingly, I find that none of the factors favouring privacy protection is relevant in the circumstances of this appeal.

In order for section 21(2)(a) to be a relevant consideration, I must be satisfied that the activities of the Ministry have been called into question, and that disclosure of the personal information found in the severed line is desirable for the purpose of subjecting the activities of the Ministry to public scrutiny (Orders P-828 and M-1074).

In my view, there is sufficient evidence before me to establish that the actions of the Ministry and the government during the planning approval process for the golf course and subdivision has been called into question publicly. The appellant provides a number of newspaper articles to support this position, and points out that serious allegations regarding the approval process were raised in the Ontario Legislature. Having reviewed the information contained in the severed line, I find that it deals directly with the issue raised by the media and in the House, and I accept that its disclosure is desirable for the purpose of subjecting the activities of the Ministry and the government to public scrutiny in the context of planning decisions that have been called into question.

Although I do not necessarily share the appellant's view that this information, which has already been widely reported, is as significant as he maintains, I nonetheless accept that section 21(2)(a) is a relevant consideration in the specific circumstance of this appeal for the reasons stated. I also find that, absent any factors favouring privacy protection, the factor in section 21(2)(a) is sufficient in the circumstances to outweigh any privacy interest that may exist, and that disclosure of the information contained in the severed line would not constitute an unjustified invasion of the privacy of any individual. Accordingly, I find that the severed line does not qualify for exemption under section 21(1) of the *Act* and should be disclosed to the appellant.

ORDER

1. I order the Ministry to disclose the one remaining undisclosed line on page 42 of the records to the appellant by **January 17, 2002** but not before **January 11, 2002**.
2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Ministry to provide me with a copy of the record disclosed to the appellant.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

December 13, 2001 _____