



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2132**

**Appeal MA-050277-1**

**Township of North Glengarry**



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## **BACKGROUND:**

Pursuant to the *Nutrient Management Act, 2002* and the associated regulation, in some circumstances, before obtaining a building permit for certain construction projects, farm owners may be required to develop or obtain a Nutrient Management Plan (NMP). An NMP details how manure, fertilizer and other nutrients are applied to a given land base and must be prepared by someone certified under the *Nutrient Management Act, 2002*. An NMP is given approval by the Ontario Ministry of Agriculture, Food and Rural Affairs.

## **NATURE OF THE APPEAL:**

The Township of North Glengarry (the Township) received a request under the *Municipal Freedom and Protection of Privacy Act* (the *Act*) for information related to a multi-barn hog farm facility. Specifically, the requester sought access to “copies of the complete building permit application for the barns being built by [a named company], including the Nutrient Management Plan (NMP)”.

The Township located two records responsive to the request, the building permit application and the supporting NMP, and denied access to them on the basis that they qualify for exemption under section 10(1) (third party information) of the *Act*.

The requester, now the appellant, appealed the Township’s decision.

During mediation, the appellant took the position that the Township did not fully respond to his request because it did not include the building permit itself among the responsive records. The Township advised that it interpreted the request to be for the “building permit application” only; therefore, it did not include the actual issued building permit as part of the records. Throughout mediation, the appellant maintained that his initial request included a request for access to the building permit itself. Accordingly, the issue of “scope of the request” was added to the appeal.

As further mediation was unsuccessful, the file was transferred to the adjudication stage of the appeal process.

I began my Inquiry into this appeal and established that, in addition to the engineer who prepared the NMP, there are 6 other individuals whose interests may be affected by the disclosure of the records, (the affected parties). The background to this appeal is relatively convoluted and I have been provided with limited information. Based on the information that has been provided to me I have discerned that the affected parties are related to this appeal in the following way:

- Affected party 1 is a farm owner. The building permit application was filed in his name requesting a permit to allow for the construction of a hog farm facility. The requisite NMP filed with the building permit application was prepared by the engineer for affected party 1. It appears that the engineer was mandated to act on affected party 1’s behalf. It also appears that affected party 1 sold the permit for the construction of the hog farm facility with the land to which it applied once the building permit was granted.

- It was agreed between the various parties that a company that had not yet been established at the time the NMP was prepared (now, the named company identified in the request), was to buy the land and the permit of affected party 1 as well as some land from a direct neighbour, affected party 2.
- The new company was formed to establish a hog farm on the land acquired from affected party 1 and 2 by building the hog farm facilities detailed on the building permit application and the Nutrient Management Plan. The new company was incorporated under the name of the owner of the hogs, affected party 3.
- The excess manure from the hog farm was to be accepted by a neighbour, affected party 2 who agreed to spread the manure on a specified number of workable acres that form part of his own farming operation. Some of those acres he owns while some of them he rents from other individuals, those other individuals are affected parties 4, 5, and 6.

I began my inquiry into this appeal by sending a Notice of Inquiry to the Township, requesting representations. I also sent a copy of the Notice to the engineer who prepared the NMP and the six other affected parties who might have an interest in the disclosure of some of the information in the records, inviting representations.

The Township advised that it would not be submitting representations in response to the Notice of Inquiry. The engineer who prepared the NMP provided brief representations and took the position that these agreements are private and there is no reason that this information should be made public. Two of the remaining six affected parties provided representations in response to the Notice of Inquiry. Affected party 1, who was the original building permit applicant, requested that all information be released. Affected party 4 objected to the release of any information related to them. Affected parties 2, 5 and 6 did not respond to the Notice of Inquiry. An incomplete address was all that could be located for affected party 3. The Notice of Inquiry that was sent to affected party 3 was returned to this office and further attempts to contact them were unsuccessful.

I then sent a copy of the Notice of Inquiry to the appellant, in which I briefly summarized the representations of the engineer and attached a copy of the more detailed representations of affected party 1. The appellant provided representations in response.

A review of the records indicates that the records may contain information that qualifies as personal information, the disclosure of which might result in an invasion of privacy under section 14(1). As section 14(1) is a mandatory exemption, I will include an analysis of its application to the records at issue at the end of my discussion below.

**RECORDS/ISSUES:**

Three issues are to be determined in this appeal:

- Whether a copy of the building permit itself falls within the scope of the appellant’s request.
- Whether the mandatory exemption at section 10(1) (third party information) applies to the Building Permit Application and/or the NMP.
- Whether the mandatory personal privacy exemption at section 14(1) applies to exempt portions of the above noted records.

**DISCUSSION:**

**Scope of request**

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

. . . . .
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

The appellant’s request reads:

Through your [specified date] fax, we learned that council denied two residents, [named individual] and [named individual], *copies of the complete building permit application* for the barns being built by [named individual], *including the nutrient management plan.* [emphasis added]

...

We are now requesting that the Township provide us with the same information it denied the two residents...

The appellant takes the position that the Township has failed to adequately respond to his request. He submits that although the Township addressed access to the building permit application and the NMP it did not address access to the building permit itself. The appellant argues that the permit itself formed part of the records he sought by his request. The Township, however, takes the position that the building permit itself falls outside the scope of the request.

Neither the appellant nor the Township submitted any representations on whether or not the building permit falls within the scope of the appellant's request.

Previous orders of this office have established that in circumstances where requests are broad and/or vague, the institution has a statutory obligation under section 17(2) to assist in clarifying the scope of the request. Orders have also held that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of spirit of the *Act*. Generally, it has been found that ambiguity in a request should be resolved in the requester's favour [Orders P-134, P-880].

In my view, in the circumstances of this appeal, there is neither uncertainty nor ambiguity with respect to the records sought by the appellant. I find that the request does not include the relevant building permit within its scope. The appellant specifies that he seeks access to "the complete building permit application" for the specified hog barn, "including the nutrient management plan". As the request is neither broad nor vague, but rather quite precise, referencing specific information previously sought by another individual and denied by the Township, I accept that it was reasonable for the Township to assume that the request sufficiently described the records sought and did not trigger the statutory obligation outlined in section 17(2).

Moreover, in my view, even a liberal interpretation of the appellant's request does not include the building permit itself. In my view, a request for the "complete building permit application, including the NMP" can reasonably be interpreted to include a completed building permit application form, as well as any and all information submitted by the applicant in support of the application. However, I do not agree that the request as framed would necessarily include any information compiled by the Township with respect to the evaluation of the application, including any records related to whether or not the application has been approved. In my view, to find that the building permit itself was included in this request would be to broaden its scope beyond its reasonable interpretation.

Accordingly, I do not accept the appellant's position that access to the related building permit is caught within the scope of the request. In my view his request was clear, and the Township's response was appropriate. Therefore, I find that the building permit itself does not fall within the scope of the appellant's request and I dismiss this part of the appeal.

The appellant is advised that, despite my finding on this issue, he is not precluded from pursuing access to the building permit by submitting another request for the relevant building permit itself.

### **THIRD PARTY INFORMATION**

Section 10(1) states:

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.

Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 10(1) to apply, the Township and/or the third party must satisfy each part of the following three-part test:

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 paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

### **Part 1: type of information**

In order for section 10(1) to apply, the information in the records must qualify as at least one of the types of information listed in the section.

The types of information listed in section 10(1) have been discussed in prior orders. Those that might be relevant to the circumstances of this appeal have been defined as follows:

*Trade secret* means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].

*Scientific information* is information belonging to an organized field of knowledge in 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 a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010].

*Technical information* is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While 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 [Order PO-2010].

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

I adopt these definitions for the purposes of this appeal.

The engineer who prepared the NMP does not make any specific representations on the type of information contained in the records at issue but his representations suggest that he takes the position that they contain, at minimum, trade secrets and financial information. He states that the construction plans or engineering drawings detail a new construction technique and the NMP contains information about agreements between various affected parties.

The affected party, one of the neighbours, who objected to the disclosure of the information stated simply that the records contain “private financial information”.

The affected party, the individual in whose name the building permit application was filed and for whom the NMP was prepared, supports the disclosure of the information at issue. He submits:

Because I have not seen the completed barn or seen the blue prints, I cannot positively state that there are no “trade secrets” involved. But from the fact that this is a hog farm the like of which hundreds have been built in the past, I cannot imagine there being any trade secrets involved, or unique scientific, commercial or financial information. The way these hog barns operate is widely know, and although there may be slight variations from barn to barn, they are built on a common blueprint which is also generally well know. I have information here which shows contracts, nutrient management plans from other hog barns, information which was widely circulated.

The appellant responds that he is not trying to undercover trade secrets but that he believes that the records contain public information that should be made available.

As noted above, the Township and the remaining affected parties chose not to submit representations.

Having reviewed the records, I find that some of the information at issue qualifies as one or more of the types of information listed in section 10(1), while some of the information does not.

I will first address the building permit application which was submitted in the name of affected party 1 as owner of the land upon which the proposed facilities for a hog farm are to be built. In my view the majority of the building permit application, does not contain the types of information set out in section 10(1) of the *Act*. It is a completed standardized form that contains very generic information about the structures that the applicant is applying for permission to build. The application also notes in several places that the NMP should be referenced for more

detailed information. The only portion of the application that contains information of the type referenced in section 10(1) is that which details the estimated cost of the construction of the proposed structures. I find that this portion of the building permit application alone qualifies as financial information and, thereby, meets part 1 of the section 10(1) test.

I do not find that remainder of the information in the building permit application satisfies part 1 of the test. Accordingly, as all three parts of the test under section 10(1) must be met, the remaining information on the building permit application is not exempt under this section.

The NMP was prepared by an engineer, a professional in the field, and contains information such as site plans and maps of the property and of the area, technical construction plans or engineering drawings of the proposed hog barns as well as other related constructions, schematics detailing drainage plans for the property and adjacent properties, results of nutrient analyses and soil analyses. The NMP also contains a purchase and sale agreement for the building permit portions of the property that are to make up the farmstead for the hog farm.

Although in my view I have not been provided with sufficient information to establish whether some of this information might qualify as trade secrets, I do find that much of the information in the NMP qualifies as technical and/or scientific information. I also find that some of the information qualifies as financial information, specifically that which details the purchase and sale agreements for some of the property relevant to the construction of the hog barns. Additionally, although this was not specifically asserted by any party, on the basis of my review of the record itself, I am satisfied that the NMP contains information that qualifies as commercial information since it provides a plan for the operation of a commercial enterprise.

Based on my findings above, I have found that part 1 of the section 10(1) test has been established for that portion of the building permit application which indicates the estimated cost for the construction of the proposed buildings. I also find that part 1 of the section 10(1) test has been met for the NMP in its entirety. I will therefore go on to determine whether this information meets the requirements of part 2 of the section 10(1) test.

Although no other exemption has been claimed for either of these records, my review of both the building permit and the NMP indicates that they may contain personal information that might trigger the application of the exemption at section 14(1). As section 14(1) is a mandatory exemption, I will review the possible application of section 14(1) below.

## **Part 2: supplied in confidence**

In order to satisfy part 2 of the test, an affected party must have “supplied” the information to the City “in confidence”, either implicitly or explicitly.

### ***Supplied***

The requirement that it be shown that the information was “supplied” to the institution reflects the purpose in section 10(1) or protecting the informational assets of third parties [Order MO-1706].

Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party [Orders PO-2020, PO-2043].

Having reviewed the records at issue I find that the information contained therein was supplied to the Township by third parties, specifically, affected party 1, who is the property owner in whose name the building permit application. I further find that the NMP was supplied to the Township by the engineer who was mandated to act on affected party 1’s behalf and prepared the NMP to be submitted with the building permit application.

Some of the information contained in the NMP was prepared by the engineer himself. However, some of information, such as soil analyses, was prepared by agricultural consultants retained by the engineer on behalf of the owner to fulfill the requirements of the NMP. This information was compiled by the engineer when putting together the NMP. I find that all of the information contained in the NMP was supplied to the Township by affected party 1, by way of the engineer, within the meaning of section 10(1).

As for the estimated construction cost listed on the building permit application as filled out by the applicant, I find that this information was clearly also supplied to the Township within the meaning of section 10(1).

### ***In confidence***

In order to satisfy the “in confidence” component of part 2, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must be reasonable and have an objective basis [Order PO-2020].

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization

- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [Order PO-2043]

I have received very limited representations on whether or not the information at issue in the building permit application and the NMP was supplied “in confidence” to the Township. The Township submitted no representations at all. The appellant submits very generally that the information at issue is public information that should be disclosed. Affected party 1, who supports disclosure of the information, submits that he has no information before him that would lead him to conclude that the information was “something different and extraordinary to the Township which must be kept under wraps at all costs”, but submits that he has no knowledge of the expectations of the company who built the hog farm facility.

The most substantive representations on whether the information was supplied “in confidence” were from the engineer who prepared the NMP. His representations were brief, but he submits generally that the information in the NMP should be protected. More specifically, he submits that he had an expectation of confidentiality with respect to the construction plans or engineering drawings that he prepared which describe in detail the plans for various components of the facility, particularly, the hog barns and the manure tank. The engineer submits that these drawings are very precise and detailed and that there was an expectation that they would be kept in confidence. He submits that this expectation of confidentiality is also likely in line with the expectation of the company which built and now runs the hog farm facility.

The engineer also submits that the NMP contains arrangements between various affected parties that are private in nature and there is no reason that this information should be made public.

Based on the submissions of the engineer who prepared them, I am satisfied that the detailed information contained in the engineering drawings which outline the proposed construction of each of the structures that make up the hog farm facility was supplied with an implicit expectation of confidentiality. I am also satisfied that the expectation on the part of the engineer that his detailed technical work was to be kept in confidence was reasonable in the circumstances, given his personal interest in maintaining the confidentiality of this information.

I do not, however, find that this expectation of confidentiality extends to the remaining portions of the NMP, including the site plans and maps which lay out the details of the subject property itself. In my view, the parties who are resisting disclosure have not provided me with sufficiently detailed evidence to allow me to conclude that it was supplied to the Township on the basis that it was to be kept confidential. The parties have provided no information on how the information was treated prior to it being supplied to the Township, how the Township treated it when it was received, whether or not it is available from sources to which the public has access or whether it was prepared for a purpose that would not entail disclosure. In the absence of such detailed and convincing evidence, I find that the parties have not met the requirements of part 2 of the section 10(1) test with respect to this information.

Accordingly, I find that the detailed construction plans or engineering drawings that outline the construction of the barns and the manure tank have met part 2 of the section 10(1) test. With respect to this information, I will now consider whether disclosure could reasonably be expected to result in one or more of the harms specified in section 10(1).

I have found that part 2 of the section 10(1) test has not been established for the remaining information in both the building permit application and the NMP. As all three parts of the section 10(1) test have to be established for the exemption at section 10(1) to apply, it is not necessary for me to go on to consider the reasonable expectation of harms. However, for the sake of completeness, I will do so.

### **Part 3: harms**

To establish part 3, the “harms” component of the section 10(1) test, the Township and/or the third party must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus [Order PO-2020].

As with part 2 of the test, the parties have provided very limited representations on whether any of the harms listed in section 10(1) could reasonably be expected to occur should the information contained in the building permit application and the NMP be disclosed. Affected party 1, who supports disclosure of the information, took the position that there would be no prejudice to the competitive position of the company who built the hog farm facility. He also submits generally that none of the other harms listed in section 10(1) are likely to occur.

Specifically addressing the construction plans or engineering drawings for the barns and manure tank, the engineer who prepared them submits that disclosure of the information contained in the drawings would result in the revelation of technical information that will significantly prejudice both his competitive position and that of the company that built the facility and currently operates the hog farm. He submits that these drawings describe a new construction technique for such facilities and that disclosure of this information will permit competitors in both the engineering profession and the hog farm business to acquire this information at no expense or effort on their part and use it in competition against both himself and against the hog farm owners.

With respect to the construction drawings, I find that I have been provided with the type of detailed and convincing evidence of harm which is required to meet the third part of the test under this exemption. I accept that the disclosure of these drawings could reasonably be

expected to adversely affect the engineer's competitive position. The specific construction techniques and methods reflected in the drawing are valuable to others in the industry and are carefully guarded by engineering firms such as that with which the engineer is affiliated. I find that disclosure of the engineering drawings detailing the construction of the barns and the manure tank could reasonably be expected to result in harm to the competitive position of the engineer who prepared them.

As all three parts of the section 10(1) test have been satisfied for the engineering drawings which detail the construction of the barns and the manure tank, I find that the information contained in these drawings is properly exempt from disclosure under section 10(1).

As for the remaining information, which failed to meet part 2 of the test, I find that the Township and the affected parties, including the property owner and the engineer who prepared the NMP, have failed to provide the level of detailed and convincing evidence necessary to establish a reasonable expectation that any of the section 10(1) harms would occur were the remaining information (the estimated cost of the construction project listed in the building permit application and the information in the NMP other than the construction drawings) is disclosed.

I am not persuaded that disclosure of the remaining information in each of the records can reasonably be expected to prejudice significantly the competitive position of any of the affected parties (section 10(1)(a)), result in undue loss or gain to any party (section 10(1)(c)) or lead to any of the other harms specified in section 10(1).

Although the Township submitted that section 10(1) applies to exempt the NMP from disclosure, it did not provide any representations to support its broad assertion that its disclosure could prejudice significantly the competitive position of the farm owners or cause them undue loss.

In conclusion, the Township and the affected parties have not provided me with sufficient evidence to establish that, in the circumstances of this appeal, disclosure of the information contained in the building permit application and the remaining information in the NMP could reasonably be expected to lead to the harms addressed in section 10(1). Accordingly, other than the construction plans or engineering drawings described above the information contained in the NMP is not exempt from disclosure under section 10(1).

Although no other exemptions have been claimed for the records, as noted above, my review of the records revealed that they may contain information that qualifies as personal information which in turn may qualify for exemption under section 14(1). As section 14(1) is a mandatory exemption, I will continue with my analysis to determine whether any of the information that I have not found exempt under section 10(1) is personal information that is exempt under section 14(1).

## PERSONAL INFORMATION

From my review of the records at issue, it appears that they may contain information that qualifies as “personal information” as defined at section 2(1) of the *Act*. If it is established that a record contains “personal information,” it must be then determined whether the mandatory personal privacy exemption under section 14(1) applies to exempt the personal information from disclosure.

In section 2(1), “personal information” is defined, in part to mean recorded information about an identifiable individual including, information relating to financial transactions in which the individual has been involved [paragraph (b)] and, the address and telephone number of the individual [paragraph (d)].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

In his Order PO-2225, former Assistant Commissioner Tom Mitchinson reviewed the meaning of “personal information” and its application to the information of individuals who carry on business activities. In assessing whether such information is “about” the individual in a personal sense as required by section 2(1), the Assistant Commissioner asked the following questions:

- In what context does the name of the individual appear? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
- Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

Applying these questions to the circumstances before him, the Assistant Commissioner found that information about individual landlords who were in arrears with respect to payment of fines, fees or costs to the Ontario Rental Housing Tribunal was not their personal information. In arriving at this conclusion, he stated:

...when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena. The landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate that he/she owns. Income and expenses incurred by a landlord are accounted for under specific provisions of the *Income Tax Act*, in my view, the

time, effort and resources invested by an individual in this context fall outside the personal sphere and within the scope of profit-motivated business activity.

...

As far as the second point is concerned, the information at issue does not reveal precisely why the individual owes money to the Tribunal, and the mere fact that the individual may be personally liable for the debt is not, in my view, personal, since the debt arises in a business, non-personal context. The fact that monies owed have not been fully paid is also, in my view, not sufficient to bring what is essentially a business debt into the personal realm, nor is the fact that a landlord may be prohibited by statute from commencing an application under the *TPA*.

I agree with the above analysis. In applying its reasoning to the appeal before me, I find that all of the information in the building permit application and the majority of the information contained in the NMP do not qualify as “personal information” of any of the parties involved in this appeal. In my view, this information is more accurately described as containing information about individuals in their business or professional capacity.

First addressing the building permit application, the permit applicant as well the other individuals listed on the application as contractor and engineer, have clearly filed the application in the context of engaging in a business activity. By the permit application, the applicant is seeking approval to construct a number of hog barns and a manure tank for the purpose of housing approximately 6000 pigs, which represents a significant commercial undertaking. The NMP was prepared in support of the building permit application, approval of which by the Ontario Ministry of Agriculture, Food and Rural Affairs is a prerequisite for the approval of the building permit. The NMP is, therefore, intimately tied to the commercial undertaking and describes it in more specific detail.

Similar to the information relating to the landlords in Order PO-2225, the parties involved in this undertaking entered into various different types of business arrangements for the purpose of realizing income in their farming operations. Income and expenses incurred by the property owners are accounted for as business income for the purposes of the *Income Tax Act* and, in my view, the time, effort and resources invested by the property owners in this context falls outside the personal sphere and within the scope of profit-motivated business activity.

In my view, one section of the NMP warrants particular mention. Sections 4(a), (b) and (c) describe a number of purchase and sale agreements between various parties involved in this undertaking. As mentioned above, the original applicant for the building permit subsequently sold the permit, along with a portion of his land to the company now constructing the hog barns. That company also purchased land from another neighbour, affected party 2, to make up the new farmstead. The purchase and sale agreements that govern the exchange of lands are handwritten but include the breakdown of monies to be paid to the purchaser and certain additional sale conditions. It could be argued that disclosing the contents of these purchase and sale agreements would reveal activities and financial transactions to be undertaken by the property owners in

their personal capacity. However, I find that, having reviewed the NMP and the purchase and sale agreements, taking this into consideration, I find that these transactions describe a strictly business arrangement. The transactions relate to only a portion of the land owned by the sellers and do not provide sufficiently detailed information that could lead to inferences being drawn about the personal finances of the owners such as their individual finances, net worth and credit worthiness.

Another point that is worth mentioning is that while I acknowledge that some of the individuals mentioned in the records may be engaged in what might be characterized as “family farm” operations, this does not alter my finding. Fundamentally, both large and small farming operations can be said to be operating in the same “business arena”, albeit on a different scale. As Adjudicator Laurel Cropley pointed out in Order MO-1562, the distinction between a personal and a business capacity does not depend on the size of a particular undertaking. Even if I were to accept that any of the individuals were engaged in a small-scale operation, which is certainly not the case for the company building the barns, in my view, they have made a conscious decision to enter into the business realm, and it necessarily follows that activities associated with the operation of their farming businesses are inherently of a business nature and not personal.

As indicated in Order PO-2225, the analysis does not end with an assessment of the context in which the names of individuals appear. I must go on to establish whether there is something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individuals.

Having reviewed the records closely, I find that there is nothing in the building permit application that would allow the information to “cross over” into the personal realm. As for the NMP, while I find that a small amount of information in the NMP does cross over into the personal realm and qualifies as “personal information” within the meaning of the *Act*, the majority of the information in the NMP does not reveal anything of a personal nature of any of the individuals listed therein.

The small amount of information that I find does cross over into the personal realm to qualify as “personal information” within the meaning of the *Act* is limited to the home telephone numbers of two of the affected parties. Section 2 of the NMP details a spill emergency contingency plan and subsection 6 of section 2 lists the contact information including telephone numbers of individuals to contact in an emergency. For the first two individuals listed on the contact sheet, the information includes their home telephone number. The home telephone number for one of these individuals also appears, handwritten along with the affected party’s name, at the top of the cover page of the NMP. I accept that home telephone numbers are information about the individuals in a personal capacity and qualify as “personal information” within the meaning of paragraph (d) of the definition of that term in section 2(1) of the *Act*. Accordingly, with respect to the home telephone numbers that appear in the NMP, I will go on to determine whether section 14(1) applies to exempt them from disclosure.

## INVASION OF PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The only exception with potential application in the circumstances of this appeal is section 14(1)(f) which states:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). Section 14(2) provides criteria for the institution to consider in making a determination of whether disclosure would constitute an unjustified invasion of personal privacy; section 14(3) lists the types of information the disclosure of which is *presumed* to constitute an unjustified invasion of personal privacy; section 14(4) refers to certain types of information whose disclosure *does not* constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure under section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2). A section 14(3) presumption cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the “compelling public interest” override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

In the present appeal, I find that none of the exceptions listed in section 14(4) and none of the presumptions listed in section 14(3) have any application.

As no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

In the circumstances of this appeal, only section 14(2)(h) appears to have any possible application to the disclosure of the home telephone number. 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 personal information has been supplied by the individual to whom the information relates in confidence.

The factor listed in section 14(2)(h) favours privacy protection. None of the factors favouring disclosure appear to have any relevance in the circumstances of this appeal. Without determining the weight that might be accorded to the factor in section 14(2)(h), balancing the appellant's right of access to the home telephone numbers of two affected parties and the affected parties' privacy rights to have their home telephone numbers kept confidential, I find that disclosure of the home telephone numbers would result in an unjustified invasion of those individuals' personal privacy. The home telephone numbers are, accordingly, exempt from disclosure under section 14(1) of the *Act*.

**ORDER:**

1. I uphold the Township's decision to withhold the construction drawings of the four barns and the manure tank contained in the Nutrient Management Plan.
2. I uphold the Township's decision to withhold the home telephone number of the two individuals listed on the emergency contact sheet in section 2-6 of the Nutrient Management Plan as well as the telephone number handwritten at the top of the cover page of the Nutrient Management Plan.
3. I order the Township to disclose the building permit application in its entirety and the information in the Nutrient Management Plan, other than the information outlined in provisions 1 and 2, to the appellant by **January 22, 2007** but not before **January 16, 2007**.
4. In order to verify compliance with Provision 1 of this Order, I reserve the right to require the Township to provide me with a copy of the records disclosed to the appellant, upon request.

Original Signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ December 14, 2006