

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER PO-3278**

Appeals PA13-29 and PA13-30

Ministry of Municipal Affairs and Housing

November 22, 2013

**Summary:** The appellant sought access to the registration information of two building inspectors registered with the ministry. At issue was information about their training examinations and the dates of their certification by the ministry. The ministry denied access, citing the mandatory personal privacy exemption in section 21(1). This order finds this information exempt and upholds the ministry's decisions.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) definition of personal information, 21(1), 21(3)(d).

### **OVERVIEW:**

[1] The Ministry of Municipal Affairs and Housing (the ministry) received two requests under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the following information in relation to two named individuals, who are building inspectors certified by the ministry:

- all registration documentation not available on website
- all payment receipt documentation
- all correspondence between the registrant, any other interested party and the Ministry regarding registration.

[2] The ministry notified the individuals named in the records of the request and that it may affect their interests. The individuals (affected persons), were given an opportunity to make representations concerning disclosure of the records. The affected persons then consented to the disclosure of the records to the appellant with the redactions proposed by the ministry.

[3] The ministry issued a decision granting partial access to the responsive records. Access was denied to the remaining parts of the records pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*.

[4] The requester (now the appellant) appealed the ministry's decisions to deny access to the withheld portions of the records and appeal files PA13-29 and PA13-30 were opened.

[5] During mediation, the appellant advised the mediator that he was not interested in the affected parties' residential addresses, telephone numbers, business telephone numbers, email addresses, and fax numbers. The appellant confirmed that he is seeking access to the dates withheld from the qualification certificates issued by the ministry, as well as access to all of the records withheld in full.

[6] As mediation did not resolve the issues in these appeals, the files were transferred to the adjudication stage where an adjudicator conducts an inquiry. Representations were received and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] In this order, I uphold the ministry's decisions and dismiss the appeals.

## **RECORDS:**

### File PA13-29

[8] Remaining at issue are all of the dates withheld from two qualification certificates, an updating of qualifications form, a fax cover page, three letters from the ministry to the affected person, and a sewage system inspector's filing.

### File PA13-30

[9] Remaining at issue are the dates withheld from four qualification certificates, two advanced standing application forms (including a fax cover page), four letters from the ministry to the affected person, and an inspector's filing. Also remaining at issue are the records withheld in full (10 certificate documents, two advanced standing checklists and a letter addressed to the affected person from the ministry).

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

## **DISCUSSION:**

### **A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (h) 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;

[11] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>1</sup>

[12] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[13] 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.<sup>2</sup>

[14] 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.<sup>3</sup>

[15] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

[16] The ministry submits that the exam completion dates are the personal information of the affected persons, as it forms part of their educational history under paragraph (b) of the definition of personal information in section 2(1). The ministry

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<sup>1</sup> Order 11.

<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

states that it administers the *Building Code Act, 1992* and the Building Code, which require municipal building officials to successfully complete a prescribed examination program and to file certain prescribed information on their completion of the examination program with the ministry. As part of the prescribed examination program, building officials, such as the affected persons, may have to successfully complete a number of Building Code exams. As part of the administration of the qualification program, the ministry also receives other personal information from building officials to allow for the processing of their requests to take the prescribed Building Code exams.

[17] The ministry points out that while Article 3.1.8.1. of the Building Code authorizes the ministry to create a public registry containing some information that would otherwise be considered to be the personal information of the qualified person, this Article does not authorize it to release the information on the date when the qualified person passed a required exam.

[18] The ministry submits that the withheld dates would, if disclosed, reveal the dates upon which the affected persons completed courses in the Ontario Building Code Education Program and received their qualifications under the Building Code. The ministry submits that the qualification dates relate to the affected persons' education and employment history, as described in section 2(1)(b). The ministry submits that the information requested is related to the affected persons in their personal capacity.

[19] The ministry goes on to argue that the date of the completion of the exams by the affected persons reveals personal information about them. When compiled with the information available on the Building Code website, this information could indicate how long it took them to complete their exam program. The ministry submits that given the information already available on the Building Code website about the affected persons, that the appellant could easily link the exam completion date to their names and employers.

[20] The affected persons state that the records contain:

- information relating to their education or employment history or financial transactions in which they have been involved;
- an identifying number, symbol or other particular assigned to them;
- their addresses or telephone numbers;
- correspondence sent to an institution that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence; and
- sensitive financial information including credit card numbers.

[21] The appellant states that the information that is being requested was collected by the ministry in order to maintain a register of the qualifications of public officials as required by the *Building Code Act*. It further states that these public officials may use the power of this registration to obtain employment in which they enforce the *Building Code Act*. The appellant states that, therefore, the information contained within the records relates to the professional capacities of these individuals.

### ***Analysis/Findings***

[22] The appellant is not interested in the affected parties' residential addresses, telephone numbers, business telephone numbers, email addresses, and fax numbers. The appellant confirmed that he is only seeking access to the dates withheld from the records in both appeal files and access to the records withheld in full in appeal file PA13-30.

[23] File PA13-29 has nine pages of records. At issue in these records are the dates when the first affected person applied for and became qualified as an inspector under the *Building Code Act*.

[24] File PA13-30 has 27 pages of records. At issue in these records is the same information for the second affected person that is at issue in file PA13-29, as well as all of the information from the records withheld in full. The records that are withheld in full are:

- pages 11 to 16 and 22 to 25, which are training course certificates of the second affected person,
- pages 17, 18, 26 and 27, which are checklist forms listing the portions of the training courses completed by the second affected person, and
- page 19, which is a letter to the second affected person from the ministry about his training examinations.

[25] Based on my review of the information at issue, I find that it qualifies as personal information. Although it relates to the affected persons as inspectors in an official capacity, it qualifies as personal information because it reveals something of a personal nature about these individuals. This information is about the educational and employment history of the two affected persons, in accordance with paragraph (b) of section 2(1) of the definition of personal information. The information at issue in these appeals is not information which addresses whether the affected persons were qualified

inspectors. The information at issue is information about the affected person's employment training.<sup>5</sup>

[26] As the information at issue in the records is personal information, I will now consider whether the mandatory personal privacy exemption in section 21(1) applies to exempt it from disclosure.

**B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?**

[27] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[28] The ministry states that:

While section 21(1)(c) exempts personal information collected and maintained specifically for a publically available record, the Building Code public register does not include the exam qualification dates that are in issue in this Inquiry. [T]he Ministry submits that the disclosure of these exam dates would constitute an unjustified invasion of the affected person's personal privacy under clause 21(3)(d) as constituting records related to employment or educational history.

The ministry submits that the dates the affected person completed the Building Code examinations relates to the educational history of the building official. The dates of completion of the exams are necessarily tied to the affected person completing the exams...

The ministry submits that the dates on the records each consist of the individual's educational history and to a lesser degree their employment history.

As noted above, the Building Code website indicates which exams the building official has completed. So the public can determine whether the building official has completed a particular Building Code exam.

Clause 21(2)(e) requires the head when making a decision on whether the disclosure of the personal information constitutes an invasion of personal privacy to consider whether the release of the information will unfairly expose the individual to whom the information relates to pecuniary or other harm. With regards to clause 21(1)(f) and clause 21(2)(e), the

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<sup>5</sup> Orders P-1124 and PO-2759.

affected persons have expressed a concern in their submission that if the records are released this information may be used to harass or harm them.

[29] The affected persons submit that the information relates to their employment or educational history and is highly sensitive.

[30] The affected persons also submit that they would be exposed unfairly to pecuniary or other harm<sup>6</sup> if their personal information is released and/or the disclosure may unfairly damage their reputations.<sup>7</sup> They explain that the appellant has a long history with the affected persons and the municipality that they work for (the municipality). There were numerous disagreements between the municipality and the appellant in regards to the issuance of a building permit beginning in 2005, including the issuing of a number of orders against the appellant. The appellant was prosecuted and convicted of violations to the Building Code, which were upheld on appeal.

[31] The affected persons state that the appellant has made three Freedom of Information requests to the municipality, the county and now the Ministry of Municipal Affairs and Housing. They submit that the appellant is seeking information to assist him in furthering his dispute with the municipality and is seeking personal information against those who were the main witnesses in the prosecution.

[32] The appellant states that the past disagreements have no relevance to the appeal at hand and are inaccurate. The appellant refers to a municipal appeal where it states that the institution released a number of documents related to private individuals<sup>8</sup> which contain much of the same information that is at issue in this appeal.

[33] The appellant states that the ministry's website was set up to publicize the conditions of registration of inspectors to the public. He suggests that it is then reasonable to assume that an interested member of the public would be allowed to verify that the ministry has fulfilled its obligations with regards to the administration of the website. The appellant states that the information that is being requested was collected by the ministry in order to maintain a record of the qualifications and registration of public officials. These qualifications are required by the *Building Code Act*.

[34] In reply, the ministry states the information at issue relates to the educational history of the two building inspectors. The ministry submits that the release of the requested records would result in a presumed invasion of privacy under section 21(3)(d) of the *Act*. The ministry also submits that the municipality's decision to release

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<sup>6</sup> See section 21(2)(e) of *FIPPA*.

<sup>7</sup> See section 21(2)(i) of *FIPPA*.

<sup>8</sup> Not government employees.



certain records, which appear to be unrelated to these appeals, does not bind the ministry's decisions in these appeals.

### ***Analysis/Findings***

[35] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. In the circumstances, it appears that the only exception that could apply is paragraph (f). This section reads:

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

[36] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21. Paragraphs (a) to (d) of section 21(4) do not apply in this appeal.

[37] In the circumstances, it appears that the presumption at paragraph (d) could apply. This section reads:

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

relates to employment or educational history

[38] As stated above, the information at issue in the records is about when the affected persons completed certain employment training courses. I find that it relates to their educational and employment history within the meaning of the presumption in section 21(3)(d). The ministry website does not contain the information at issue, nor does the Building Code require this information to be made public. Nor do the documents attached to the appellant's representations, which were disclosed to him by the municipality, contain this information. The information at issue in this order is similar information to that often found in resumes<sup>9</sup> and work histories<sup>10</sup> which have been held in previous orders to fall within the scope of section 21(3)(d).

[39] Accordingly, I find that the presumption in section 21(3)(d) applies to the information at issue.

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<sup>9</sup> Orders M-7, M-319 and M-1084.

<sup>10</sup> Orders M-1084 and MO-1257.

[40] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the “public interest override” at section 23 applies.<sup>11</sup> Section 21(4) does not apply in this appeal and the public interest override in section 23 has not been raised.

[41] Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).<sup>12</sup>

[42] Accordingly, as the presumption in section 21(3)(d) applies, I find that the information at issue in appeal files PA13-29 and PA13-30 is exempt by reason of the mandatory personal privacy exemption in section 21(1).

**ORDER:**

I uphold the ministry’s decisions and dismiss the appeals.

Original Signed By: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ November 22, 2013

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<sup>11</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>12</sup> *John Doe*, cited above.