

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-3616

Appeal PA15-144

Ministry of the Environment and Climate Change

May 30, 2016

**Summary:** The appellant made a request to the ministry under the *Freedom of Information and Protection of Privacy Act* for a copy of an environmental consultant's report relating to a residential dwelling on leased land. The ministry denied access to the report on the basis that it is exempt from disclosure under the mandatory personal privacy exemption at section 21(1) of the *Act*. In this order, the adjudicator finds that the personal information in the report is exempt from disclosure under section 21(1), but orders that the remaining information be disclosed to the appellant.

**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) and 21(1).

### BACKGROUND:

[1] The appellant made a request to the Ministry of the Environment and Climate Change (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for "... a report completed by an environmental consultant ... retained by an individual to conduct an investigation and ultimately draft a report, with respect to [a named property management company]'s land located at [a specified address], Ontario".

[2] The ministry notified an affected party, who objected to disclosure of the report on the basis that it had been provided to the ministry on the condition that it not be disclosed, and that disclosure to the appellant would be an invasion of the affected party's privacy. The ministry then issued a decision denying the appellant access to the

report on the basis of the mandatory personal privacy exemption found in section 21(1) of the *Act*. The appellant appealed the ministry's decision to this office.

[3] During mediation, the appellant's representative informed the mediator that the appellant is not seeking access to any personal information that may be contained in the report, but wishes to receive information about the testing that was done and the results of the inspection/evaluation. The affected party confirmed that he does not consent to the disclosure of any of the information in the report, and the ministry stated that it is not prepared to disclose any portion of the report to the appellant.

[4] As mediation did not resolve the issues in dispute, the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

[5] I invited and received representations from the ministry and the affected party, followed by the appellant. The ministry and the affected party filed representations in reply.

[6] In this order, I find that the report contains personal information, and other information that is not personal information. I find that the personal information is exempt from disclosure pursuant to section 21(1) of the *Act*, and I order disclosure of the remaining information to the appellant.

## **RECORD:**

[7] The record at issue is an environmental consultant's report addressed to the affected party (the report).

## **ISSUES:**

- A. Does the report 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:**

**Issue A: Does the report contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[8] In order to determine whether the personal privacy exemption at section 21(1) of the *Act* applies, it is necessary, first, to decide whether the report 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;

[9] 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>

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

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<sup>1</sup> Order 11.

(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.

[11] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

[12] In addition, 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>3</sup>

[13] Previous orders of this office have also distinguished between personal information as opposed to information about a property. This distinction is discussed in more detail below.

### ***Representations***

[14] The ministry submits that the report contains the affected party's name and address, which is his personal information. It submits that even if the affected party's name and address were severed, the affected party would be identifiable given the circumstances surrounding the request for the report.

[15] The ministry submits, further, that the report contains personal information because the testing was done specifically on the affected party's property.

[16] The affected party submits that the report contains information about his home and his health.

[17] The appellant submits that it is not reasonable to expect that an individual will be identified if the record is disclosed, since the person who commissioned the report may or may not be the person who resides at the property. The appellant also submits that information about a property is not personal information.

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<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

### ***Analysis and findings***

*Is it reasonable to expect that an individual will be identified if the report is disclosed?*

[18] I begin by addressing the issue of whether disclosure of the report could reasonably be expected to identify an individual. If not, then the information in the report is not personal information. If, on the other hand, disclosure could reasonably be expected to identify an individual, then I must determine whether the information in the report otherwise falls within the definition of personal information.

[19] Having reviewed the parties' representations and the report, I find that disclosure of the report could reasonably be expected to identify the affected party. Further, I find that this would be the case even if his name and address were redacted from the report. I base this finding on the circumstances surrounding the commissioning of the report, as described in the representations of the ministry and the affected party. I cannot be more specific about the circumstances without revealing the identity of the affected party.

*Does the information in the report otherwise qualify as "personal information"?*

[20] While I have found above that the affected party is identifiable, that is not sufficient to find that the report contains his personal information. To qualify as personal information, the information in a record must be "about" the individual.

[21] For the purposes of my analysis, I find that the information in the report can usefully be divided into the following categories:

1. The name and address of the affected party;
2. The affected party's comments to the environmental consultant;
3. The consultant's testing and findings relating to the inside of the affected party's residence; and
4. The consultant's testing and findings relating to areas outside the affected party's residence on the landlord's premises.

[22] I find that the information in category 1 – the affected party's name, along with his address – is his personal information under paragraph (d) of the definition.

[23] In order to address the information in categories 2, 3 and 4, it is necessary to review the distinction between information about an individual, as opposed to information about a property. Several previous orders of this office have considered whether information about a residential property is also "personal information".

[24] In Order 23, Commissioner Sidney B. Linden made the following findings regarding the distinction between information that qualifies as "personal information" and information about residential properties:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "...any recorded information about an identifiable individual..." In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal information".

Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual" ... In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[25] In Order MO-2053, Adjudicator John Higgins reviewed the jurisprudence following Order 23 addressing this distinction between information about a residential property and "personal information":

Subsequent orders have further examined the distinction between information about residential properties and "personal information". Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose

property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have

committed infractions against property standards by-laws was personal information. *In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.*

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites was found not to be personal information. Similarly, in Order PO-2322, former Assistant Commissioner Tom Mitchinson found that water analysis and test results concerning an identified property were information about the property, not personal information. [Emphasis in original]

[26] Adjudicator Higgins went on to find that two fields of information titled "street no" and "street name" for locations of septic systems were information about the property and not "about" an identifiable individual. Similarly, in Order PO-3088, Adjudicator Stephanie Haly found that environmental test results relating to the basements of certain homes were not the personal information of the homeowners.

[27] I agree with Adjudicator Higgins that the guiding principle in distinguishing personal information from information about a property is whether the information in the record reveals something of a personal nature about an individual.

[28] The distinction between personal information and information about a property was also recently discussed in *Edmonton (City) v Alberta (Information and Privacy Commissioner)*,<sup>4</sup> a decision of the Alberta Court of Appeal. This decision is not binding on me, being a decision of another province applying a different statute. However, the approach upheld in that decision is consistent with this office's approach and I find it useful to review the Court's reasoning.

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<sup>4</sup> 2016 ABCA 110 (CanLII) (*Edmonton v. Alberta (IPC)*).

[29] At issue in the appeal before the Alberta Information and Privacy Commissioner was whether the requester's request to the city for all information relating to complaints about her property was a request for her own "personal information" or information about a property. The adjudicator found that information connected to a property might be "about an individual" if it had a personal dimension to it. For example, the adjudicator contrasted complaints made about the removal of snow from the requester's sidewalks (which would be about the requester's conduct), with complaints made about lot grading (which would be about the requester's property).

[30] In upholding the adjudicator's findings, the Alberta Court of Appeal stated as follows:

In general terms, there is some universality to the conclusion in *Leon's Furniture* that personal information has to be essentially "about a person", and not "about an object", even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act*. It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a "personal dimension", it might sometimes properly be characterized as "personal information". In this case, the essence of the request was for complaints and opinions expressed about [the requester]. The adjudicator's conclusion (at paras. 49-51) that this type of request was "personal", relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law...

[31] I agree with the analysis adopted in the above-noted orders and in *Edmonton v. Alberta (IPC)*, and will apply it to the three remaining categories of information in the record before me.

The affected party's comments to the consultant

[32] Having reviewed the portions of the report recording information that the affected party relayed to the consultant, I find that they reveal something of a personal nature about the affected party. While the information is also about a property, it is primarily about an individual and his subjective views and experiences in relation to the property. The information has a clearly personal dimension. I find, therefore, that it is personal information as defined in the *Act*.



The consultant's testing and findings relating to the inside of the affected party's residence; and relating to areas outside the affected party's residence on the landlord's premises

[33] The affected party explained in his representations that the dwelling is owned and is located on leased land.

[34] I find that the portions of the report that contain the consultant's testing and findings regarding the inside of the affected party's residence do not reveal anything of a personal nature about an individual. The information is about a property and not about an individual, and there is no personal dimension to the information that would result in the information constituting personal information for the purposes of the *Act*.

[35] Similarly, the consultant's testing and findings with respect to other areas on the landlord's land, outside the affected party's residence, do not constitute the personal information of any individual.

#### Conclusion with respect to personal information

[36] I conclude that some portions of the report contain the personal information of the affected party. No other personal information is contained in the report.

[37] Since no other exemption has been claimed for the information that I have found is not personal information, I will order that it be disclosed to the appellant.

[38] I will now consider whether the personal information in the report is exempt from disclosure pursuant to the mandatory personal privacy exemption at section 21(1) of the *Act*.

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

[39] 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. The appellant submits that the exception at section 21(1)(f) applies; that is, disclosure would not be an unjustified invasion of personal privacy.

[40] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. The appellant does not argue that any of the circumstances listed in section 21(4) are present in this appeal, and I find that they are not.

[41] 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>5</sup>

[42] On review of the report, I find that some of the personal information in it constitutes "medical history" within the meaning of section 21(3)(a). Disclosure of this information is presumed, therefore, to be an unjustified invasion of personal privacy. 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>6</sup> Since section 21(4) does not apply and the appellant has not raised the public interest override, I find that the medical information in the report is exempt from disclosure pursuant to section 21(1).

[43] I find that no section 21(3) presumption applies to the remainder of the personal information in the report. Where no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>7</sup> In order to find that disclosure does *not* constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.<sup>8</sup>

[44] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).<sup>9</sup>

[45] I will begin by considering the appellant's arguments in favour of disclosure. The appellant submits that the disclosure of the report is desirable for the purpose of subjecting the activities of the government of Ontario and its agencies to public scrutiny, within the meaning of section 21(2)(a). The appellant submits that the report was provided to a ministry Environmental Officer who had the authority to attend at the subject property, investigate, issue orders, and/or recommend charges against the landowner. The appellant states "given that the record may have caused the Officer to take any or all of the above-noted action, it is imperative that the record be disclosed".

[46] Section 21(2)(a) contemplates disclosure in order to subject the activities of the

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<sup>5</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>6</sup> *John Doe v. Ontario (Information and Privacy Commissioner)*, cited above.

<sup>7</sup> Order P-239.

<sup>8</sup> Orders PO-2267 and PO-2733.

<sup>9</sup> Order P-99.

government to public scrutiny.<sup>10</sup> The principle of public accountability is to be considered in deciding whether disclosure is desirable for the purpose outlined in section 21(2)(a).<sup>11</sup>

[47] I have reviewed the appellant's submission on this factor, but find that the factor does not apply. Section 21(2)(a) does not apply simply because a public official takes action in accordance with his or her duties. Moreover, the report contains no information whatsoever with respect to any actions the ministry may have undertaken following its receipt. I find, therefore, that disclosure of the report would not assist in any way in furthering the goal of public accountability by subjecting the activities of the ministry to public scrutiny. The interests described in the report are essentially the private interests of the landlord and of the tenants who own homes on the landlord's land.

[48] The appellant did not raise any other factors that would weigh in favour of disclosure. Absent any factors weighing in favour of disclosure, the exception at section 21(1)(f) does not apply and the disclosure of the record would be an unjustified invasion of personal privacy.

[49] As a result, it is not necessary for me to decide whether any of the factors weighing against disclosure apply. Therefore, while the affected party's representations raise the possible application of sections 21(2)(e) (pecuniary or other harm) and 21(2)(h) (supplied in confidence), I do not need to consider whether these factors apply in the circumstances of this appeal.

[50] I conclude that the disclosure of the personal information in the record would result in an unjustified invasion of an individual's personal privacy. As a result, the exception at section 21(1)(f) does not apply, and the personal information in the report is exempt from disclosure pursuant to section 21(1).

## **ORDER:**

1. I uphold the ministry's decision, in part, and order it to disclose to the appellant the information in the record that is not personal information. A copy of the record, with the information to be disclosed highlighted in yellow, is being provided to the ministry with its copy of this order. Disclosure is to take place by **July 5, 2016** but not before **June 27, 2016**.

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<sup>10</sup> Order P-1134.

<sup>11</sup> Order P-256.

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 information disclosed to the appellant.

Original Signed by: \_\_\_\_\_

Gillian Shaw  
Adjudicator

\_\_\_\_\_ May 30, 2016