Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3913

Appeal PA17-366

Ministry of Natural Resources and Forestry

December 19, 2018

Summary: An individual submitted a request to the Ministry of Natural Resources and Forestry under the *Freedom of Information and Protection of Privacy Act* for access to information related to a specific Ontario Parks reservation. The ministry denied access to the record in its entirety based on the mandatory personal privacy exemption in section 21(1). In this order, the adjudicator finds that section 21(1) applies and upholds the ministry's decision to deny access to the record.

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) and 21(2)(h).

OVERVIEW:

[1] This order addresses the issues raised by the decision of the Ministry of Natural Resources and Forestry (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) in response to a request for access to information in an Ontario Parks reservation about a named individual's canoe trip to a specific provincial park. Some of Ontario's larger provincial parks have multiple entry points from which people can access the backcountry for hiking, canoeing, fishing and camping. This request specifically sought the access point for the named individual's canoe trip and the names of the lakes camped on.

[2] The ministry initially issued a decision refusing to confirm or deny the existence of responsive records, pursuant to section 21(5) of the *Act.*[1] The requester, now the appellant, appealed the ministry's decision to this office and a mediator was appointed to explore the possibility of resolving the appeal.

[3] During the mediation stage, the ministry issued a revised decision to the appellant noting "press coverage given to the issue that confirmed the existence of a record responsive to your request" as the basis for withdrawing its claim of section 21(5) of the *Act* to refuse to confirm or deny the existence of responsive records. The ministry advised the appellant that it had decided to notify an individual whose interests could be affected by disclosure to provide an opportunity to make submissions concerning disclosure, pursuant to section 28 of the *Act.* After notifying the affected party and receiving that individual's submissions, the ministry issued a decision denying access to the responsive record in its entirety under sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*.

[4] Since the appellant wished to pursue access to the information, a mediated resolution of the appeal was not possible, and it moved to the adjudication stage of the appeal process for an inquiry. I sought representations by sending a Notice of Inquiry outlining the issues to the ministry and the affected party, initially. The ministry provided representations on the personal privacy exemption, but withdrew its section 17(1) exemption claim because the affected party denied that the information is commercial in nature. This removed consideration of section 17(1) from the scope of the appeal. The affected party did not submit representations.

[5] Next, I sent the appellant a Notice of Inquiry with a non-confidential copy of the ministry's representations and a non-confidential summary of the affected party's position opposing disclosure of the record, as it had been conveyed to the ministry.[2] The appellant provided brief submissions in response.

[6] In this order, I find that the Ontario Parks reservation contains the personal information of identifiable individuals other than the appellant and that the record is exempt, in its entirety, under section 21(1) of the *Act.*

RECORDS:

[7] The record at issue is a three-page Ontario Parks reservation.

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[1] Section 21(5) of *FIPPA* states: "A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy."

[2] The ministry's representations and the affected party's position were shared with the appellant in accordance with the IPC's *Code of Procedure* and the confidentiality criteria in IPC *Practice Direction Number 7*.

ISSUES:

A. Does the Ontario Parks reservation at issue contain "personal information" according to the definition in section 2(1) of the *Act*?

B. Is the Ontario Parks reservation at issue exempt under the mandatory personal privacy exemption in section 21(1)?

DISCUSSION:

A. Does the Ontario Parks reservation at issue contain "personal information" according to the definition in section 2(1) of the *Act*?

[8] The ministry relies on section 21(1) to deny access to the record in its entirety. To determine whether the record qualifies for exemption under section 21(1), I must first decide if the record contains "personal information" and, if so, to whom it relates. This is because the mandatory exemption in section 21(1) can only apply to *personal* information, which is defined in section 2(1). The parts of this definition that are relevant in this appeal state 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,
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,
> >
> > (d) the address, telephone number, fingerprints or blood type of the individual,
> >
> > (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.[3]

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

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[3] Order 11.

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.
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> (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, the information must be about the individual in a personal capacity. Generally, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[4] However, 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.[5]

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[6]

Representations

[13] The ministry claims that the record contains information that fits within paragraphs (a), (d) and (h) of the definition of "personal information" in section 2(1). Specifically, the ministry notes that the record contains, among other information, the name of the affected party and his child, the affected party's contact information, and the time and locations of their stay in the provincial park.

[14] The appellant argues that since he is not seeking any information about the affected party other than the canoe trip route, including its access point and the lakes camped on, this is not "personal information." The appellant's arguments on this issue, and on the personal privacy exemption, are based partly on the premise that because the affected party operates a fishing guide business, the Ontario Parks reservation information cannot be considered "personal information."

[15] In response to the appellant's arguments about why the information at issue is not "personal information," the ministry noted that the affected party responded to the request, stating that the canoe trip was taken with his child for personal, not business reasons. Accompanying the ministry's representations were copies of the affected

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[4] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.
[6] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

party's responses to notification under section 28(1) of the *Act*.[7] Certain portions of the affected party's submissions respond to the appellant's suggestion that his (the affected party's) online and media activity following the trip suggest that the information is business or commercial information.

> It has been suggested that the video in question could potentially be viewed as business related because of what I do. The fact of the matter is the … video in question has never been monetized. It never will … This is my only video among any published on youtube that is not monetized.
>
> Unlike any other trips I've done in the last few years under the umbrella of Canada Fishing Guide, I was not compensated in [any] way at all. It's a personal video that I wanted to share with my friends and family and the people who follow me.

Analysis and findings

[16] To begin, I confirm that the record at issue is a three-page Ontario Parks reservation. Based on my review of the record, I am satisfied that it contains "personal information," according to the definition of that term in section 2(1). Specifically, I find that the record contains personal information about the affected party that fits within paragraphs (a), (c), (d) and (h) of the definition, as set out above. Regarding the appellant's claim that he is solely interested in the access point number and the names of the lakes camped on by the affected party, I find that this particular information fits within paragraph (h) as constituting "other information" about the affected party in the context of the Ontario Parks reservation.

[17] Additionally, I find that the record also contains personal information about two other identifiable individuals fitting within paragraphs (a), (c) and (h) of the definition.

[18] Respecting the appellant's argument that the information he seeks is not personal, due to the nature of the affected party's business and the alleged "publicizing" of the canoe trip by the affected party, I note that it is the provisions of the *Act* that guide my finding as to whether the information at issue qualifies as "personal information" under *FIPPA*. To the extent that the appellant's submissions may be aimed at the personal information exceptions in sections 2(3) and 2(4), I find that they have no application on the facts here. The evidence satisfies me that the record at issue contains information about the affected party and the other identifiable individuals in a personal, not business, capacity.

[19] I will now review the possible application of the mandatory personal privacy exemption in section 21(1) to the record.

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[7] These responses were contained in two emails sent by the affected party to the ministry.

B. Is the Ontario Parks reservation at issue exempt under the mandatory personal privacy exemption in section 21(1)?

[20] Where a requester seeks the 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 section 21(1)(a) to (e) exceptions are relatively straightforward. Section 21(1)(f) allows disclosure if it would not be an unjustified invasion of personal privacy. The determination under section 21(1)(f) is more complex and requires a consideration of additional parts of section 21, including the factors in section 21(2) and the presumptions in section 21(3). Section 21(4) lists situations that would not be an unjustified invasion of personal privacy, although none has any application in this appeal.

[21] 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.[8] In the circumstances of this appeal, none of the exceptions in section 21(4) has any application and the public interest override in section 23 has not been raised, nor would I find it to apply.

[22] When no section 21(3) presumption applies, or any exceptions in section 21(4), 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.[9] 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.[10]

[23] 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).[11]

Representations

[24] The ministry provided submissions on the presumption against disclosure in section 21(3)(f) and the factor in section 21(2)(h). These sections state that:

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[8] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).
[9] Order P-239.
[10] Orders PO-2267 and PO-2733.
[11] Order P-99.

> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
>
> (2) 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,
>
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

[25] The ministry argues that the personal information in the record does not fit within any of the exceptions in clauses (a) to (e) of section 21(1) and that it therefore considered whether disclosure would be an unjustified invasion of personal privacy under section 21(1)(f). The ministry states that it considered all of the relevant circumstances, including the criteria set out in sections 21(2) and (3) of the *Act.*

[26] The ministry claims that the presumption in section 21(3)(f) applies to the personal information of another named individual in the record because disclosure of it would reveal the "financial activities" of an individual who paid the reservation fee. The ministry does not otherwise rely on the presumptions in section 21(3).

[27] Respecting section 21(2)(h), the ministry states that "the personal information was supplied to the ministry by the affected party in confidence for the limited purpose of reserving a campsite in [the park] for a family fishing/canoe trip." The ministry offered additional support for the application of this factor in a confidential portion of its representations. The ministry states that it concluded that none of the other factors in section 21(2) apply to the record and that its disclosure would result in an unjustified invasion of personal privacy.

[28] Since the appellant focuses on seeking access to the access point number and the lakes on which the affected party camped each night of the trip, I asked the ministry to address the issue of severance. Specifically, the ministry was asked to consider whether it would be possible to sever the record to disclose non-exempt portions pursuant to section 10(2) of the *Act.* The ministry states that in considering whether it would be reasonable to sever any non-exempt information from the information it had determined to be exempt pursuant to section 21(1), it followed the reasoning of the Divisional Court in *Ontario v. Ontario*,[12] which held that:

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[12] Order P0-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner),* (1997), 2004 CanLII 39011 (ON CA), 192 OAC 71 (Div. Ct.).

> The key question raised by section 10(2) is one of reasonableness: severance and disclosure of portions of a record is not required where doing so would reveal only "disconnected snippets," or "worthless," "meaningless" or "misleading" information."

[29] The ministry adds that if the personal information were severed from the record, the remaining content would essentially be only the shell of the Ontario Parks reservation form. In this context, the ministry says it determined that "a reservation form devoid of details regarding the location of the affected party's travels in [the park] would not be of assistance to the appellant" and so it decided to withhold the record in its entirety.

[30] The appellant submits that "the [affected] party lost all rights to non-disclosure by posting all over the internet and giving interviews to the media." The appellant claims to have viewed YouTube and Facebook posts by the affected party, which he suggests offered him enough detail to be able to make the access request as he did. Second, the appellant refers to the ministry's "winter camping protocol" which he submits requires "all permits be displayed on the campers/ interior trippers vehicle with name, address, phone, trip route information including camping spots for each night." The appellant argues that the ministry's denial of access in this situation suggests a "pick and choose" approach to disclosure and a "double standard" when compared with the information he claims is required by its open permit display regulation.

[31] The affected party submits that disclosure of the information in the records would be "a gross invasion" of his personal privacy and that he does not want it released "under any circumstances." The affected party states that he took this particular trip with his child and he adds, further, that if he had "wanted the world to know precisely where I was fishing in [the park] I wouldn't have made the video vague."

Analysis and findings

[32] As confirmed under the "personal information" analysis above, my review of the disclosure of the affected party's personal information, and that belonging to the other individuals, takes place under the mandatory exemption in section 21(1). Based on my consideration of the record, and the representations of the parties, I find that disclosure of the record would result in an unjustified invasion of the personal privacy of individuals other than the appellant, and that it is exempt under section 21(1).

[33] The appellant refers to the ministry's "winter camping protocol," which he submits requires that camping permits "with name, address, phone, trip route information including camping spots for each night" be displayed on campers' vehicles parked at any access point. The appellant submits that the ministry's denial of access under the *Act* is at odds with the requirements of its "open permit display regulation." To the extent that this argument implicitly raises the section 21(1)(c) exception to

section 21(1), I find that the exception does not apply. The appellant provided no support for the suggestion that "name, address, phone, trip route information including camping spots for each night" constitutes personal information "collected and maintained specifically for the purpose of creating a record available to the general public" as the exception in section 21(1)(c) requires.[13] Although the identified personal information may be collected for the purpose of issuing permits, there is no persuasive evidence that the collection is for the purpose of creating a record available to the general public, as the second part of the exception requires. Indeed, the ministry's representations on the factor in section 21(2)(h) support the opposite conclusion, as I consider below.

[34] First, however, I considered whether disclosure of personal information would result in "an unjustified invasion of personal privacy" on the basis of any of the presumptions in section 21(3). The ministry raises section 21(3)(f) regarding the personal information of another identifiable individual that relates to the reservation fee. On my review of it, however, I am not satisfied that disclosure of the limited personal information of this other individual would result in a presumed invasion of personal privacy as contemplated by section 21(3)(f). This particular information merely shows the amount paid for a camping permit. It does not qualify as a "description" of that individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. Accordingly, I find that the section 21(3)(f) presumption does not apply. In this context, therefore, my analysis turns to reviewing the factors in section 21(2) that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[14]

[35] The ministry submits that section 21(2)(h) applies and weighs against disclosure of the Ontario Parks reservation in the circumstances of this appeal. I agree. The factor in section 21(2)(h) may be found to apply if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. The factor requires an objective assessment of the reasonableness of any confidentiality expectation.[15] The ministry's evidence, including the confidential portions of it, supports a conclusion that there is a presumption of confidentiality inherent in the making of an Ontario Parks reservation. The affected party's response to notification of the request by the ministry is also strongly suggestive of a conclusion that he expected the information to be treated confidentially, and I find that his belief was reasonable in the circumstances. Moreover, the possible "publicizing" of the canoe trip after the fact by the affected party does not change this finding. Certainly, there is no evidence before me that the affected party publicized any of the information in the record. Rather, it

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[13] For example, Ontario Regulation 347/07 under the *Provincial Parks and Conservation Reserves Act, 2006*, Provincial Parks, General Provisions, or elsewhere.
[14] Order P-239.
[15] Order PO-1670.

appears that the personal information in the record was subject to reasonable efforts by both the ministry and the affected party to maintain its confidentiality. For these reasons, I find that the factor in section 21(2)(h) applies and weighs in favour of privacy protection.

[36] I have considered whether the appellant's representations support the application of any of the factors favouring disclosure in section 21(2)(a) through (d), but I find that none of them apply; nor is there sufficient evidence to support a finding that any unlisted factors favouring disclosure, such as inherent fairness issues[16] or ensuring public confidence in an institution,[17] apply.

[37] Given my conclusion that the section 21(2)(h) factor favouring non-disclosure applies and that there are no applicable factors favouring disclosure, I find that disclosure of the personal information in the Ontario Parks reservation relating to the affected party and other individuals would result in an unjustified invasion of their personal privacy under section 21(1).

[38] As part of this analysis, I considered section 10(2) of the *Act*, which obliges the ministry to disclose as much of the record as can reasonably be severed without disclosing material which is exempt. I note that section 10(2) does not "mandate a surgical process whereby disconnected phrases which do not, by themselves, contain exempt information are picked out of otherwise exempt material and released." In other words, severance should allow for disclosure that is "proportionate to the quality of access."[18] I agree with the ministry's position, and I find, that applying severance to the record at issue would leave merely the shell of the Ontario Parks reservation, which would not be reasonable for the purpose of section 10(2). Consequently, I will not order the ministry to do so.

ORDER:

As the record is exempt in its entirety under section 21(1) and cannot reasonably be severed, I uphold the ministry's decision not to disclose it.

Original Signed by: December 19, 2018
Daphne Loukidelis
Adjudicator

[16] Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.
[17] Orders M-129, P-237, P-1014 and PO-2657.
[18] See, for example, Order PO-3577 at paragraphs 84 to 89.