

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4242

Appeal PA18-00719

Ministry of Northern Development, Mines, Natural Resources and Forestry

March 2, 2022

Summary: The Ministry of Northern Development, Mines, Natural Resources and Forestry received a request under the *Freedom of Information and Protection of Privacy Act* for access to land use permit records for a specified address. After notifying the two permit holders as parties with an interest in the records, the ministry issued a decision granting full access to the responsive records. The third parties, now the appellants, appealed the ministry's decision, claiming that sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act* apply to the records. In this order, the adjudicator upholds the ministry's decision to disclose the records in their entirety to the requester and she dismisses the appeal.

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"), 2(3), and 17(1).

Orders Considered: Orders MO-1194 and PO-2225.

OVERVIEW:

[1] This order deals with the issue of access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to land use permits (LUPs) for a specified address. LUPs are one type of occupational authority for Crown land in Ontario. Upon application to and approval by the Ministry of Northern Development, Mines, Natural Resources and Forestry (the ministry), a LUP allows for a specified activity to take place on Crown land, but does not give the permit holder ownership of

the land or an interest in the land.¹ A LUP is required for a commercial use dock, whereas docks for personal use, with some exceptions, do not require a LUP.

[2] In this appeal, the ministry² received a request under the *Act* for access to information pertaining to the LUP for docks at a specified address in a waterfront cottage community. Following notification, under section 28(1) of the *Act*, of the two individuals who hold the LUP, the ministry issued a decision granting the requester full access to the responsive records, which include letters, LUP application forms, and emails.

[3] The two individuals who hold the LUP, now the appellants, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the appellants confirmed that they were appealing the ministry's decision to disclose the responsive records to the requester on the basis of their view that the records should be withheld pursuant to the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*.

[5] The requester advised that they continue to pursue access to the responsive records. The ministry maintained its decision to grant the requester full access to the responsive records.

[6] As a mediated resolution was not possible, the appeal was moved to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry by inviting representations from the appellants, initially, which I received. I shared the non-confidential representations of the appellants with the ministry and the requester.³ I invited and received representations from them.

[7] The records at issue also contain the information of six individuals other than the two appellants. Since their interests may be affected by disclosure, I will refer to each of these individuals as an affected party. One affected party, the former LUP holder, was notified by the ministry of the request at the request stage and consented to disclosure of their information to the requester.

[8] The ministry did not notify the other affected parties, who were co-applicants for the LUPs. When I decided to notify the five remaining affected parties, I asked the ministry for contact information for them. The ministry was able to provide the contact information for three of the five remaining affected parties and I used it to inform them about the request and my inquiry.⁴ These affected parties did not respond to the

¹ According to the ministry's own website, <https://www.ontario.ca/page/buy-or-rent-crown-land>.

² The ministry was known as the Ministry of Natural Resources and Forestry at the time of the request.

³ These portions were withheld in accordance with the confidentiality criteria in IPC *Practice Direction 7* and section 7 of the IPC's *Code of Procedure*.

⁴ I was unable to locate contact information for the other two affected parties.

correspondence that I sent, nor did they participate in the inquiry.

[9] In this order, I uphold the ministry's decision to disclose the records in their entirety to the requester, and I dismiss the appeal.

RECORDS:

[10] The records at issue in this appeal are as follows:

Record	Description	Pages
1	LUP ownership change form	6
2	Mar 1/03 LUP application form	8-10, 13-15
3	Cover letter for submission of Mar 1/03 LUP application	12
4	Jan 13/05 LUP address change form	16
5	Jan 13/05 letter from the ministry enclosing Mar 1/04 LUP application form to the appellants and co-applicants	17
6	Mar 1/04 LUP application form	18-19
7	Aug 8/05 letter from the ministry to an appellant	20-23
8	Oct 31/05 reminder letter from the ministry to an appellant	24
9	Apr 5/05 letter from the ministry re expired LUP to the appellants and co-applicants	29
10	Jun 22/06 letter from the ministry enclosing Mar 1/06 LUP application form to the appellants and co-applicants	30
11	Mar 1/06 LUP application form	31-32
12	Mar 1/07 LUP application form	33-34
13	Mar 1/08 LUP application form	35-36
14	Mar 1/09 LUP application form	37-38
15	Aug 30/10 letter from the ministry enclosing Mar 1/10 LUP application form to the appellants and co-applicants	39

16	Mar 1/10 LUP application form	40
17	Mar 1/11 LUP application form – unsigned	41-42
18	Jan 16/12 letter from the ministry enclosing Mar 1/12 LUP application form to the appellants and co-applicants	43
19	Apr 24/12 payment reminder letter from the ministry to the appellants and co-applicants	44-45
20	Oct 24/12 payment reminder letter from the ministry to the appellants and co-applicants	46-47
21	Feb 14/13 payment reminder letter from the ministry to the appellants and co-applicants	48
22	Mar 13/13 letter from the ministry enclosing Mar 1/13 LUP application form to the appellants and co-applicants	49
23	Mar 1/12 LUP application form	50-51
24	May 9/14 letter from the ministry to the appellants and co-applicants	52
25	Feb 5/14 letter from the ministry enclosing Mar 1/14 LUP application form to the appellants and co-applicants	54
26	Jul 22/14 letter from the ministry to the appellants and co-applicants	56
27	Dec 16/14 letter from the ministry to the appellants and co-applicants	58
28	Jan 13/15 letter from the ministry to the appellants and co-applicants	59
29	Mar 1/14 LUP application form – unsigned	60-61
30	Oct 8/15 letter from the ministry to the appellants and co-applicants	62
31	Mar 1/14 LUP application form	63-64
32	Jun 16/15 letter from the ministry to the appellants and co-applicants	65
33	Feb 29/16 letter from the ministry to the appellants and co-applicants	66

	applicants	
34	Mar 1/15 LUP application form – unsigned	67-68
35	Apr 5/16 email from the ministry to an appellant	69
36	Aug 3/17 email from the ministry to an appellant	71
37	Aug 16/17 email from the ministry to an appellant	72
38	Aug 16/17 letter from the ministry to an appellant	73-80
39	Aug 16-18/17 emails between the ministry and the appellants	81
40	Aug 29/17 emails between the ministry and the appellants	85-86
41	Aug 29/17 letter from the ministry to the appellants	87
42	Nov 7/17 email from the ministry to an appellant	88-89
43	Nov 7, 21-22/17 emails between the ministry and the appellants	90
44	Dec 6/16 letter from the ministry to the appellants	91
45	Mar 1/16 LUP application form	92-93
46	Signed confirmation form from the appellants to the ministry	94

ISSUES:

- A. Does the mandatory exemption at section 17(1) (third party information) apply to the records?
- B. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

DISCUSSION:

A. Does the mandatory exemption at section 17(1) (third party information) apply to the records?

[11] The appellants claim that the records are exempt under section 17(1) and should be withheld on that basis.

[12] Section 17(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, where 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.

[13] Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.⁵ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.⁶

[14] For section 17(1) to apply, the institution and/or the third party (in this case, the appellants) 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 17(1) will occur.

⁵ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁶ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Part 1: type of information

[15] The types of information listed in section 17(1) have been discussed in prior orders. Based on the appellants' representations, the relevant types of information in this appeal are:

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.⁷ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁸

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.⁹

Representations of the parties

[16] The appellants submit that the records relate to a commercial agreement between them and the community whereby they construct and maintain docks used by local cottage property owners in exchange for a fee. The appellants submit that as the records contain dollar amounts, the records also contain financial information.

[17] The ministry submits that the information in the records relates to applications by the appellants for commercial LUPs under the *Public Lands Act*. The ministry acknowledges that the appellants applied for commercial LUPs on the basis that they operated a commercial dock and the ministry treated them as commercial applicants until the revocation of their permit in 2018. The ministry submits that the records in question were created in the context of its processing of applications submitted by the appellants under the ministry's regulatory authority (under the *Public Lands Act* and regulations).

[18] The requester submits that the mere fact that permit fee amounts or other dollar amounts may appear in the records does not mean that these figures are the kind of commercial or financial information to be exempted under section 17. The requester argues that fees charged by the ministry related to LUPs are not the commercial or financial information of the appellants.

⁷ Order PO-2010.

⁸ Order P-1621.

⁹ Order PO-2010.

Analysis and findings

[19] Based on my review of the records at issue and the representations of the parties, I am satisfied that the records contain commercial and/or financial information, because some of the records contain commercial information as they relate to the appellants' dock business, while others contain both commercial and financial information, because they relate to that business but also contain specific dollar figures, such as the LUP fees, related to that business.

[20] The requester argues that permit fees and other dollar amounts contained in the records are not financial information as defined by section 17(1) of the *Act*. However, I find that the dollar amounts contained in the records, which largely relate to the LUP fees, are financial information. In Order PO-1911, the adjudicator found that LUP fees constitute financial information as contemplated by section 17(1) of the *Act*, and I agree with that finding. I am satisfied that the LUP fee can be considered a cost associated with the operation of the appellants' dock business.

[21] In conclusion, I find that the records contain commercial and/or financial information as that term is defined by section 17(1). As part 1 of the test under section 17(1) is met, I must now consider whether the appellants supplied the commercial and/or financial information contained in the records, in confidence, to the ministry.

Part 2: supplied in confidence

Representations of the parties

[22] The appellants submit that all the information in the records pertaining to the application for and maintenance of the LUPs was supplied by them to the ministry on a confidential basis. The appellants submit that the records at issue also include information that, if disclosed, would permit the drawing of accurate inferences with respect to information supplied by the appellants, which includes roll numbers, permit numbers, etc.

[23] The appellants submit that the information in the records was supplied to the ministry with an implicit expectation of confidentiality. The appellants submit that the LUPs concern the docks administered by them and the applications were never published in a public forum. The appellants submit that they have always conducted their affairs in a confidential matter. The appellants further submit that the terms and conditions associated with the LUPs, which take up a whole page, do not say anything about possible publication (or disclosure) of records associated with the LUPs.

[24] The ministry submits the appellants have not demonstrated that they had a reasonable expectation of confidentiality in the course of the LUP application process. The ministry submits that there is no evidence that the ministry gave the appellants any explicit assurance of confidentiality, or that the appellants sought such assurance. The ministry submits that the mere act of supplying information to the ministry does not

create a reasonable expectation of confidentiality, nor does the lack of an express warning that information may be disclosed. The ministry submits that its obligations under the *Act* were or should have been known by the appellants. The ministry further submits that the records in question were created in the context of processing an application subject to the ministry's regulatory authority, which is not a process in which an applicant ordinarily would expect confidentiality, absent a specific reason and/or an explicit request by the applicant or assurance by the ministry.

[25] The requester submits that applications for use of ministry-controlled Crown lands, including LUPs, have normally required that the applicants (the appellants) acknowledge and agree that the application, including all information contained therein, is a public record and, as such, is accessible by the public upon request. The requester submits that there was not an implicit or explicit reasonable expectation of confidentiality by the appellants in providing the information to the ministry.

Analysis and findings

Supplied

[26] The requirement in part 2 of the test under section 17(1) that the information have been "supplied" to the institution by a third party reflects the purpose in section 17(1) of protecting the informational assets of third parties.¹⁰

[27] 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.¹¹

[28] Based on my review of the records and the representations of the parties, I find that the appellants did not supply the financial information contained in the records to the ministry. However, I find that the appellants did supply the commercial information contained in the records to the ministry for the purpose of part 2 of the test for exemption under section 17(1).

[29] I found above that the records contain financial information, specifically, the LUP fees and other land use-related dollar figures. The annual LUP fees charged by the ministry are calculated by the ministry based on rates that the ministry sets. The ministry provided the applicable fee amounts on each LUP application form sent to the appellants. The other land use-related dollar figures include the property tax amounts for the commercially operated docks. The ministry also provided these amounts to the appellants in correspondence sent to them by the ministry. In other words, all of the fees and dollar figures found in the records at issue originated with the ministry, not the appellants. Based on this, I find that the financial information in the records was not supplied by the appellants to the ministry, as part 2 of section 17(1) requires, and that

¹⁰ Order MO-1706.

¹¹ Orders PO-2020 and PO-2043.

this part of the test for exemption under section 17(1) is not met.

[30] With respect to the commercial information contained in the records, specifically, information about the appellants' dock business, I am satisfied based on my review of the records that the appellants supplied this commercial information to the ministry. I find that it was supplied and, therefore, I must determine whether this commercial information was supplied "in confidence" to the ministry.

In confidence

[31] In order to satisfy the "in confidence" component of part two, 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 have an objective basis.¹²

[32] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case are considered, 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 by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.¹³

[33] Based on my review of the records and the representations of the parties, I find that the appellants did not supply the commercial information contained in the records to the ministry, in confidence, for the purpose of part 2 of the test for exemption under section 17(1).

[34] The appellants argue that the information in the records was supplied to the ministry with an implicit expectation of confidentiality and they rely on an assertion that the terms and conditions associated with the LUPs do not say anything about possible publication (or disclosure) of records associated with the LUPs. The ministry submits, and I accept, that the mere act of supplying information to the ministry does not create a reasonable expectation of confidentiality, nor does the lack of an express warning that information will be disclosed.

[35] The records largely consist of LUP applications and related correspondence.

¹² Order PO-2020.

¹³ Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

These records were created in the context of processing LUP applications subject to the ministry's regulatory authority. The ministry submits, and I accept, that this is not a process in which an applicant ordinarily would expect confidentiality. As the ministry points out, a LUP is required for the operation of the appellants' dock business, so the appellants were required to provide the information contained in the LUP applications; and there is no evidence before me that the appellants sought or received assurances of confidentiality from the ministry prior to submitting this information. These are all factors I have considered in deciding whether any expectation of confidentiality on the part of the appellants was objectively reasonable in the circumstances.

[36] Therefore, even if I accepted that the appellants had a subjective expectation of confidentiality, I find that the appellants did not have an objectively reasonable expectation of confidentiality at the time the information was provided to the ministry. Therefore, I find that the second part of the test for the section 17(1) exemption has not been met for the commercial information the appellants were required to provide to the ministry regarding the LUPs for their commercial dock business.

[37] All parts of the three-part test must be met for the mandatory exemption at section 17(1) to apply. Since the appellants have not established part 2 of the test, I find that the records are not exempt under section 17(1). It is not necessary for me to consider the application of part 3 of the three-part test to the records. I must now consider whether the mandatory personal privacy exemption applies to the records at issue.

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

[38] In order to determine whether the mandatory personal privacy exemption in section 21(1) applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. The mandatory personal privacy exemption can only apply to personal information. 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 if 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;

[39] 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.¹⁴

[40] 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.

[41] 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.¹⁵

[42] 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.¹⁶

¹⁴ Order 11.

¹⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

[43] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹⁷

Representations of the parties

[44] The appellants submit that the records at issue also contain personal information of identifiable community members that falls within paragraphs (c), (d), (f) and (h) of the definition of “personal information” under section 2(1) of the *Act*. The appellants submit that the records also contain other information about these individuals that does not fit within paragraphs (a)-(h), but still constitutes personal information as that term is defined by the introductory words of the definition. The appellants’ confidential representations elaborate on this submission.

[45] The appellants submit that the IPC has previously considered the issue of personal information in the context of LUPs in Order PO-1699¹⁸ and found that names, signatures, names of co-applicants, dates, and general information respecting a road allowance being sought constituted personal information. The appellants submit that the records at issue contain the same kinds of information, which should be found to be personal information, because the information either directly identifies or is otherwise about an individual. The appellants also submit that the requester is seeking the information in order to cause harm to the appellants.

[46] The ministry submits that the appellants have a history of applying for a LUP to support the operation of a commercial dock. The ministry submits that under the *Public Lands Act* and its regulations, a LUP is required for a commercial dock, whereas docks for personal use generally do not require a LUP.¹⁹ The ministry further submits that at no time during the successive applications for a commercial dock did the appellants indicate that they or their co-applicants were identifying themselves on the application forms in their personal capacity, rather than in a business capacity, as representatives of the commercial dock business.

[47] The ministry submits that it revoked the appellants’ commercial LUP in 2018. The ministry submits that it had received complaints alleging that, while the appellants had presented themselves to the ministry as operating a commercial dock, they had in fact been relying on the LUP and a private agreement to charge docking fees to co-owners of the subject lands, on which the dock is located.

[48] The ministry submits that, in contrast to the situation in Order PO-1699, in applying for a commercial LUP, the appellants presented themselves to the ministry as representatives of a business, specifically a commercial dock. The ministry submits that

¹⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

¹⁸ Referenced by the appellant as PA-990046-1, which was the IPC’s appeal number. I use the order number here.

¹⁹ Subject to the requirements in section 13(10) of O. Reg. 161/17.

in these circumstances, business information such as contact information for the commercial applicant was understood as being provided to the ministry in a business capacity rather than a personal capacity. The ministry submits that the appellants have not explained how the reasoning in PO-1699 would apply in the context of an application related to a commercial dock business (or one that was presented as such).

[49] The requester submits that section 2(3) of the *Act* provides that "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." The requester submits that the appellants state in their representations that "the whole of the records at issue relate to a commercial arrangement between the appellants and their community members." The requester argues that since, according to the appellants, the records relate to a commercial or business arrangement, the records should not be treated as personal information for the purposes of limiting disclosure.

[50] The requester notes that the appellants suggested that an applicant's identity and other related information were treated as personal information in at least one case where the IPC has considered LUPs. The requester submits, however, that in the referenced order (PO-1699), the LUPs were sought for personal residential or recreational residential properties, and not in the context of a commercial arrangement as described by the appellants in the present case.

[51] The requester submits that they seek access to the records to understand whether the LUPs have conferred exclusive authority to the appellants to control and charge for the use of the waterfront Crown lands, especially when the collective owners of the property should be entitled to the use of waterfront Crown lands.

Analysis and findings

[52] Based on my review of the records and the representations of the parties, including the confidential portions of the appellants' representations, I find that the records at issue do not contain personal information as that term is defined by section 2(1) of the *Act*. It follows that the records do not qualify for exemption under section 21(1), as claimed by the appellants.

[53] The records as a whole contain the following information:

- the name of the previous LUP holder;
- the names of the appellants and co-applicants (the other five affected parties) for the LUP;
- the appellants' addresses and phone numbers;
- the location and description of the docks (address, lot and concession number, etc.);

- the roll number of the property where the docks are located;
- the LUP numbers;
- the ministry's file numbers;
- the LUP fee amounts and corresponding period of land use;
- the property tax amount for the docks; and
- signatures of the appellants and the co-applicants; and
- the email address of one of the appellants.

[54] As noted above, since the previous LUP holder consented to the release of their information, I will order the ministry to disclose it and do not need to decide if it is "personal information".

[55] According to the introductory wording of the definition of personal information in section 2(1) of the *Act*, set out above, in order to be considered personal information, the recorded information must be "about" an individual. Previous IPC orders have drawn a distinction between personal information and information about a property.²⁰ From my review of the records and the representations of the parties, I find only some of the information contained in the records is information about an individual. I find that the location and description of the docks; the roll number of the property where the docks are located; the LUP numbers; the ministry's file numbers; the LUP fee amounts and corresponding period of land use; and the property tax amount for the docks is not information about an identifiable individual, but information that relates solely to the docks and the commercial operation of them. Therefore, I find that this information contained in the records at issue is not personal information as that term is defined in section 2(1) of the *Act*, because it is not recorded information about an individual but rather, information about a property. I also find that there is nothing in the information that reveals anything of a personal nature about any individual.

[56] The appellants have argued that the information contained in the records at issue falls within paragraphs (c), (d), (f) and (h) of the definition of personal information in section 2(1) of the *Act*. The names of the appellants and co-applicants for the LUP, the appellants' addresses and phone numbers, the signatures of the appellants and the co-applicants, and the email address of one of the appellants is recorded information that could fit within paragraphs (c), (d), and (h) of the definition of personal information in section 2(1) of the *Act*.

[57] However, as stated above, section 2(3) excludes from personal information the "name, title, contact information or designation of an individual that identifies the

²⁰ Order PO-3088.

individual in a business, professional or official capacity.” The names of the appellants and their co-applicants for the LUP, for example, may constitute personal information under section 2(1) if they appear with other personal information about these individuals, according to paragraph (h). However, if their names and contact information at issue in association with the LUPs identifies them in a business capacity, the exception in section 2(3) applies, unless disclosure of the information at issue would reveal something inherently personal, which would bring it back into the definition of personal information under the *Act*.

[58] In Order PO-2225, former Assistant Commissioner Tom Mitchinson established a two-step approach to clarify the distinction between personal information as defined by section 2(1) of the *Act*, and information that relates to an individual in a “business capacity”. Under this approach,

... the first question to ask in a case such as this is: *“in what context do the names of the individuals 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? ...

The analysis does not end here. I must go on to ask: *“is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?”* Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[59] Adopting the approach above, in order to determine whether the information at issue qualifies as personal information, I must consider the capacity in which the appellants and affected parties were acting, and the context in which their names and other information at issue appears.

Step 1: In what context does the information of the individuals appear?

[60] The appellants argue that the information at issue qualifies as personal information, because it appears in a personal capacity in the records. In support of their argument, the appellants cite Order PO-1699, where the appellant sought access to a specified LUP for a road allowance from the Ministry of Natural Resources, and the ministry granted partial access to the records with severances under section 21(1) of the *Act*. In that order, former Assistant Commissioner David Goodis upheld the ministry’s decision to deny access to the withheld information and found that names, signatures, co-applicants’ names, dates, and other information respecting the road allowance constituted personal information. Based on this order, the appellants argue that the information contained in the records at issue in this appeal should also be found to constitute personal information.

[61] In response, both the ministry and the requester argue that in Order PO-1699,

the LUP applied for by the appellant in that appeal was sought in a personal capacity, while in the present appeal, the LUP was sought for the operation of a commercial dock. I agree with the ministry and the requester. I find Order PO-1699 distinguishable on the facts, and not persuasive in this appeal, because the information at issue relate to LUPs sought for a business, not personal, purpose.

[62] Based on the evidence before me, therefore, I find that the information about the appellants and their co-applicants in the records at issue appears in a business capacity. The ministry submits, and I accept, that the appellants provided the information to the ministry in support of the operation of a commercial dock. I also accept the ministry's submission that it was understood by the ministry that the information provided by the appellants, such as their contact information and the names of their co-applicants, was provided in a business capacity rather than a personal capacity. Furthermore, as the requester points out, the appellants claim that "the whole of the records at issue relate to a commercial arrangement between the appellants and their community members." I agree that this position, taken by the appellants respecting section 17(1), is a more apt description of the enterprise at issue here, than the assertion that it is personal in nature. Therefore, I find that the information in the records is about the appellants and their co-applicants in a business capacity.

[63] Given my conclusion that the appellants' names, addresses, phone numbers, email address, and the names of their co-applicants appear in a business capacity, I find that the exception to the personal information definition in section 2(3) of the *Act* applies to this information and excludes it from the definition of personal information under the *Act*. The appellants did not specify whether the addresses contained in the records is for their dwelling. However, even if they were, section 2(4) states that section 2(3) applies even if the business is carried out from their dwelling and the contact information relates to that dwelling.

[64] With respect to the signatures contained in the records, the IPC has considered the treatment of signatures in a number of contexts in previous orders. In Order MO-1194, former Assistant Commissioner Tom Mitchinson stated that "whether or not a signature or handwriting style is personal information is dependent on context and circumstances." The former Assistant Commissioner also held that if "the signature is contained on a record created in a professional context..., it is not generally 'about an individual' in a personal sense, and would not normally fall within the scope of the definition [of personal information]."

[65] For the same reasons that I find the other information at issue appears in a business capacity above, I also find that the signatures of the appellants and the co-applicants appear in a business capacity. In the records, the signatures of the appellants and the co-applicants for the LUP only appear on the signed LUP applications and forms related to the LUP. The LUPs at issue in this appeal were sought by the appellants and their co-applicants for the operation of commercial docks, and, therefore, I find that their signatures appear in a business capacity.

[66] Having found that the information remaining at issue appears in the records in a business capacity, I must next consider whether the disclosure of this information would reveal something of a personal nature about the individuals, which would bring it back into the definition of personal information under the *Act*.

Step 2: Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

[67] 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.²¹ However, as noted in Order PO-2225, even if the information appears in a business context, the following question must still be asked: would its disclosure reveal something that is “inherently personal in nature”?

[68] I have also considered whether disclosure of the particular information at issue would reveal anything of a personal nature about the appellants and their co-applicants, and I am satisfied that it would not. The appellants’ representations, including the confidential portions, have not provided a sufficient basis for me to find that disclosure of the information at issue would reveal anything of a personal nature. The appellants submit that the requester is seeking the information in order to cause harm to them. However, the requester submits that they seek access to the information to understand whether the appellants have exclusive authority to control and charge for the use of the waterfront Crown lands, especially when the collective owners of the property should be entitled to its use.

[69] Regardless of the motivation attributed to the requester alleged by the appellants, I am simply not persuaded by the evidence that disclosure of the records would reveal anything of a personal nature about the appellants or the co-applicants for the LUP. Accordingly, I find that the records at issue do not contain personal information as that term is defined in section 2(1) of the *Act* and that disclosure of the appellants’ names, addresses, phone numbers, email address, and the names of their co-applicants, in particular, would not reveal personal information.

[70] As the personal privacy exemption can only apply to personal information, and I have found that the records do not contain personal information, the personal privacy exemption in section 21(1) cannot apply to them. Previously, I found that the third party information exemption in section 17(1) does not apply to the records, and as no other mandatory exemption is claimed (or would apply) to the records at issue, there is no basis for withholding them under the *Act*. I will uphold the ministry’s decision.

ORDER:

1. I uphold the ministry’s decision and dismiss the appeal.

²¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

2. I order the ministry to disclose the records in their entirety to the requester by **April 6, 2022**, but not before **April 1, 2022**.

Original Signed by: _____

Anna Truong
Adjudicator

March 2, 2022 _____