



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2081

Appeals MA-050342-1 and MA-050466-1

The Corporation of the Township of Tay



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NATURE OF THE APPEALS:

Appeal MA-050342

The Corporation of the Township of Tay (the Township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information filed by named applicants for a specific building permit related to an identified property. Specifically, the request sought access to copies of the site elevations and lot grading information provided in connection with the permit application.

The Township located two records that contain responsive information, both similar versions of a site plan, each however, with a different handwritten note. The Township then notified the building permit applicants of the request, as they might have an interest in the disclosure of the records. The building permit applicants objected to the disclosure of the information on the basis that the records are private and confidential. After reviewing the submissions of the building permit applicants, despite their objection, the Township issued a decision granting full access to the records to the original requester as, in the Township's view, no exemptions applied.

The building permit applicants, now the appellants, appealed the Township's decision to disclose the records and Appeal MA-050342-1 was opened.

During mediation, the Township confirmed that the records show both the site elevations and lot grading for the property, the information sought by the original requester.

The mediator then contacted the appellants to discuss the Township's decision to disclose the responsive records. The appellants advised that as, in their view, the records relate to their personal property they maintain their position that the records at issue contain their personal information and should not be disclosed. As a result, whether the records contain personal information and, if so, whether the disclosure of that information would result in an unjustified invasion of privacy under section 14(1) of the *Act*, were established as issues to be considered in this appeal.

As mediation did not resolve the appeal, it was forwarded to the adjudication stage of the appeal process.

In reviewing the appeal, I determined that given that the information related to a third party, section 10(1) of the *Act* involving third party information might apply. As section 10(1) is a mandatory exemption, I added it as an issue in the appeal.

I began my inquiry into this appeal by sending a Notice of Inquiry outlining the facts and issues on appeal to the appellants, initially, as they are the parties objecting to the disclosure of the information. The appellants did not submit representations.

I then sent a copy of the Notice of Inquiry to the Township. The Township responded with a brief letter advising that its the position of the Township that the records do not contain any personal information and as it found that no exemptions applied it was prepared to disclose the records to the original requester.

At that time, I also sent a copy of the Notice of Inquiry to the original requester, inviting him to provide representations. The original requester submitted a brief letter in response.

Appeal MA-050466-1

During the processing of the request related to Appeal MA-050342-1, the Township received a second request from the same requester for access to a copy of the site plan and survey filed for the same building permit as that referenced in the previous request.

The Township located one record (another copy of the site plan), as the responsive record. This record is the same site plan as that which makes up the records at issue in Appeal MA-050342-1 but also contains the details of a proposed deck added by hand as well as additional handwritten notations made by the Township's Zoning Technician. The Township notified the building permit applicants of the second request and again sought representations on the disclosure of the record.

The building permit applicants advised the Township that they objected to the disclosure of the record to the requester on the basis that the record is private and confidential. Again, despite the building permit applicants' objection, the Township issued a decision granting full access to the record to the requester.

The building permit applicants, already the appellants in Appeal MA-050342-1, also appealed the Township's decision to disclose the record and Appeal MA-050466-1 was opened.

During mediation, it was established that the issues to be decided were whether the information at issue was exempt under section 14(1) (unjustified invasion of privacy) and section 10(1) (third party information). No issues were resolved during mediation and Appeal MA-050466-1 was forwarded to the adjudication stage of the appeal process.

I began my inquiry into Appeal MA-050466-1 by sending a Notice of Inquiry to the appellants, initially, as they are the party objecting to the disclosure of the information. They chose not to submit representations. I then sent a copy of the Notice of Inquiry to the Township and the original requester. Neither the Township nor the original requester chose to submit representations.

As the records at issue in both appeals are substantially similar, I will dispose of Appeals MA-050342-1 and MA-050466-1 in the current order.

RECORDS:

The records at issue in both Appeals MA-050342-1 and MA-050466-1 are all copies of similar versions of a document entitled *Site Plan Showing Proposed Building Location on Part of [specified lot number and concession number] Township of Tay, County of Simcoe*. The record

responsive to Appeal Number MA-050466-1 also includes handwritten notes written by the Township's Zoning Technician and identifies the details of a proposed deck.

DISCUSSION:

PERSONAL INFORMATION

The section 14(1) personal privacy exemption applies only to information that qualifies as "personal information". That term is defined in section 2(1) of the *Act*, 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 where 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;

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 [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Information that relates to property alone has been found not be about an “individual”, even if owned by an individual, and is therefore not personal information [Orders 23, P-1186].

Analysis and finding

As noted previously, the records at issue in these appeals are copies of a site plan relating to a proposed residential building on a specific property. The site plan itself delineates the existing buildings and structures on the property as well as the proposed residential structure to replace the current one. The site plans at issue in Appeal MA-050342-1 each have a brief handwritten note and date inscribed on them while the copy of the site plan at issue in Appeal MA-050466-1 contains handwritten notes and dimensions of a proposed deck that was not present on the copies of the site plans in the other appeal. The property itself is identified on all site plans both in the title and the body of the plan by its legal description, its lot and concession number within the Township of Tay. The site plans do not identify the owner of the property. The information contained in these records raises the question of whether it is about an “identifiable individual” (which would qualify it as personal information) or information about a property [see Order 23].

I have carefully reviewed the records at issue. For the reasons that follow, I have concluded that information contained in the site plans is not “personal information” as defined by section 2(1) of the *Act* but that it is information about property.

The distinction between “personal information” and information concerning residential properties was first addressed by former Commissioner Sidney B. Linden in Order 23. In Order 23 the Commissioner made the following findings, which have been applied in a number of subsequent orders of this office [see Orders MO-188, MO-189, PO-1847].

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 ... **about** an identifiable individual? In my view, the answer is “no”; the information is **about a property** and not **about an identifiable individual**. [emphasis in original]

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**" (emphasis added). 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 request 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.

In Order 23, the information at issue was the estimated market value of properties identified by municipal address. Several subsequent orders have differed from Order 23 in concluding that the appraised value and other financial information about properties owned by individuals, are personal information (see, for example, Orders PO-1786-I, PO-1847, M-800, MO-1392). Nevertheless, the underlying analysis in Order 23, and the question of whether the information is **about** an identifiable individual, remains valuable in assessing this issue.

In Order M-188 Adjudicator Holly Big Canoe addressed whether a list of properties, without the names and addresses of the owners, identified as to be considered for potential landfill sites, qualified as "personal information" within the meaning of section 2(1) of the *Act*. Adjudicator Big Canoe followed Commissioner Linden's reasoning in Order 23, and found that despite the fact that disclosing the location of the property would enable the appellant, presumably through searches in the local Registry office, to obtain the names of the property owners, the location of the property was not information about an individual, did not appear with personal information relating to individuals, and did not reveal personal information about an individual. Accordingly, Adjudicator Big Canoe found that the property locations at issue did not fall within the scope of the section 2(1) definition of "personal information".

Recently, In Order MO-2053 Senior Adjudicator John Higgins found that municipal addresses (street number and street name) of properties for which septic system applications had been submitted was not "personal information" about an identifiable individual but was closer in nature to information which past orders have found to be about property. In Order MO-2053 Adjudicator Higgins reviewed a number of past orders that have examined the distinction between "personal information" and information about property. He states:

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 that 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.

The record at issue in this case contains several fields, and those which contain responsive information are the fifth and sixth columns titled "street no" and "street name". This information is analogous to what was at issue in Orders M-188 and PO-2322, and I find that it is "about" the properties in question and not "about" an identifiable individual. As such, it falls outside the scope of the definition of "personal information" in section 2(1) of the *Act*. Because only "personal information" can qualify for exemption under section 14(1), this exemption has no application in the circumstances of this appeal.

I agree with the reasoning set out in these previous orders.

As previously described, the information contained in the records at issue in these appeal consists of the drawings that detail the particulars of the subject property including the existing and proposed structures and particulars of the subject property, the handwritten notes inscribed on the plans and the text, which includes the legal description of the property.

I have concluded that this information is precisely analogous to the information before Senior Adjudicator Higgins in Order MO-2053. In my view, drawings, plans and notations about

proposed alterations or additions to a property in the context of a building permit application are not personal information. With respect to the legal description of the property, I find this to be similar to a municipal address in that it identifies the location of a property. On its own, or in conjunction with other information *about the property*, there is nothing of an inherently personal nature about a legal description, and Senior Adjudicator Higgins' conclusions about the municipal addresses of properties for which septic system applications had been made apply equally to the legal description of a property in connection with a building permit application. I find that this is not personal information.

Nor is this finding inconsistent with the conclusion of Adjudicator Big Canoe in Order M-138 that the names and home addresses of individual applicants for building permits qualify as personal information. Names and home addresses are clearly personal information (see paragraph (d) of the definition of "personal information" in section 2(1) of the *Act*).

As well, the fact that the names of individual owners could be determined by search in the registry office or elsewhere does not convert the permit application information in this case from information about a property to personal information. In Order PO-1847, Adjudicator Katherine Laird noted that, in the context of a discussion about correspondence concerning possible land use, "... where records are **about a property**, and not **about an identifiable individual**, the records may be disclosed, with appropriate severances, notwithstanding the possibility that the owners of the property may be identifiable through searches in land registration records and/or municipal assessment rolls."

Accordingly, I find that none of the information contained in the records at issue qualifies as "personal information" within the scope of the definition of that term in section 2(1) of the *Act*. As only "personal information" can qualify for exemption under section 14(1) as an unjustified invasion of personal privacy, section 14(1) has no application in the circumstances of these appeal.

THIRD PARTY INFORMATION

The potentially relevant portions of section 10(1) state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

...

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

For section 10(1) to apply, the party resisting disclosure, 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), or (c) of section 10(1) will occur.

Although it does not appear that the information at issue qualifies as “informational assets” belonging to a business, as section 10(1) is a mandatory exemption that was specifically raised in the mediation of Appeal MA-050466-1 and added as an issue in Appeal MA-050342-1, I will address it in my analysis of both appeals. No representations were submitted by the parties on this issue.

Part 1: type of information

The types of information listed in section 10(1) have been discussed in prior orders. The only one that might be applicable in the circumstances of this appeal is technical information. Technical information has been defined in previous orders as follows:

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or

electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].

The records at issue are copies of a site plan of a specific property which are drawings prepared by a licenced surveyor. They relate to construction proposed to be undertaken on a building. In my view, this type of information clearly falls within the definition of technical information. Accordingly, the first part of the test has been met.

Part 2: supplied in confidence

Supplied

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

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

In the circumstances of this appeal, the information was clearly supplied to the Township by the appellants in order to support a building permit application.

In confidence

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

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

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access

- prepared for a purpose that would not entail disclosure [Order PO-2043]

I have received no representations from the parties on this issue and, in my view, I have not been provided with any details of assurances of either explicit or implicit confidentiality relating to the supply of the site plan to the Township, nor is there any evidence before me which would show that the drawings have or were intended to have been treated consistently in a manner which indicates concern for their protection from disclosure. In fact, the Township's willingness to disclose the information supports a conclusion that no such assurances of confidentiality were given. I find that part 2 of the test is not met. All three parts must be met in order for the information to be exempt, and this finding is therefore a sufficient basis for me to find that the exemption does not apply. Nevertheless, for the sake of completeness, I will review part 3 of the test as well.

Part 3: harms

To meet this part of the test, the institution and/or the third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

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

As noted above, I received no representations on this issue from any of the parties. In my view, without representations I have not been provided with the detailed and convincing evidence required to establish that there is a reasonable expectation that any one of the harms listed in section 10(1) might occur. Having reviewed the records and considered the circumstances of these appeals in the absence of representations to the contrary, I make the following findings:

- Given that the information was submitted by the appellants in what appears to be their personal capacity, I find that there is no reasonable expectation of prejudice to a competitive position (section 10(1)(a)).
- Given that the information at issue is required for a building permit to be approved, I find that there is no reasonable expectation that disclosure of the information would result in similar information no longer being supplied to the Township (section 10(1)(b)).
- I have not been provided with evidence to support a reasonable expectation that disclosure of the record could result in any undue loss or gain (section 10(1)(c)).

Accordingly, I find that the third part of the test has not been met. As all three parts of the test must be met for the exemption to apply, section 10(1) of the *Act* has no application in the current appeals.

ORDER:

1. I uphold the Township's decision to release the records to the original requester by sending copies to him by **September 28, 2006** but not before **September 22, 2006**.
2. To verify compliance with Provision 1, I reserve the right to require the Township to provide me with a copy of the record disclosed to the original requester upon request.

Original signed by: _____
Catherine Corban
Adjudicator

_____ August 23, 2006