

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2007-004

January 16, 2008

DOUGLAS HOMES LTD.

Case File Number P0289

Office URL: www.oipc.ab.ca

Summary: The Applicants made a request to an Organization under the *Personal Information Protection Act* (the “Act”) for access to the reports of trade contractors who did repair work on the Applicant’s home under the New Home Warranty Program.

The Organization refused access on the basis that the reports were not “personal information” and therefore not subject to an access request under the Act.

The Adjudicator found that the Organization was not required to provide most of the information in the reports, as most of it is not “personal information” as that term is defined in the Act.

Statutes Cited: **AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1(k), 24(1)(a), 24(2)(b), 24(2)(c), 52.

Authorities Cited: **CANADA:** PIPEDA Case Summary #349 (Nov. 1, 2006); **ONT:** Orders M-15 (May 7, 1992); MC-020007-1 (Dec. 19, 2002); MO-2053 (May 9, 2006).

I. BACKGROUND

[para 1] The Applicants made a request to Douglas Homes Ltd. (the “Organization”) under the *Personal Information Protection Act* (the “Act”) for access to the reports of

trade contractors (the “Affected Parties”) who did repair work on the Applicant’s home under the New Home Warranty Program.

[para 2] The Organization had documents meeting this description, but refused access to them on the basis that the reports were not “personal information” and therefore not subject to an access request under the Act. Alternatively, the Organization refused access on the basis of section 24(2)(b) of the Act (confidential information of a commercial nature) and section 24(2)(c) of the Act (collected for an investigation or legal proceeding).

[para 3] The Applicants asked that this office review the Organization’s response. A mediator was appointed but mediation did not resolve the matter, and it was set down for a written inquiry.

[para 4] The Applicant and Organization both provided written submissions. The Organization provided a rebuttal submission. One Affected Party provided documents in its possession but did not provide a submission.

II. RECORDS AT ISSUE

[para 5] The documents that are the subject of this inquiry are the reports of trade contractors who did repair work on the Applicant’s home under the New Home Warranty Program.

III. ISSUES

[para 6] The Issues stated in the Notice of Inquiry are as follows:

Issue A: Do the reports of the Affected Parties (the “Records”) contain the Applicants’ “personal information”, as defined by section 1(k) of the Act and as provided by section 24(1)(a) of the Act?

If the Records contain the Applicants’ “personal information”, the Commissioner will decide the following issues under the Act.

Issue B: Did the Organization properly apply section 24(2)(b) of the Act (confidential information of a commercial nature) to the records/information?

Issue C: Did the Organization properly apply section 24(2)(c) of the Act (investigation or legal proceeding) to the records/information?

[para 7] The Organization’s submission also seems to address the question of whether it was authorized to disclose the Applicants’ information for particular purposes, but that is not an issue in this inquiry, and I will not address it.

IV. DISCUSSION OF ISSUES

Issue A: Do the reports of the Affected Parties (the “Records”) contain the Applicants’ “personal information”, as defined by section 1(k) of the Act and as provided by section 24(1)(a) of the Act?

[para 8] Section 24(1)(a) of the *Personal Information Protection Act* provides:

24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following:

- (a) the individual’s personal information where that information is contained in a record that is in the custody or under the control of the organization;*

Under this provision, a person is entitled to access to only their own personal information. Information other than personal information is not responsive to a properly-limited access request under the Act.

[para 9] The Act defines “personal information” as follows:

1(k) “personal information” means information about an identifiable individual;

[para 10] In order to qualify as personal information, the contents of the requested documents must be “about an identifiable individual”. The Organization provided the reports in question for my review. Although some of them mention the Applicants’ names, and their address and telephone numbers, the greatest part of the information pertains to inspections and repair work that was done or was to be done in relation to the Applicants’ home. The statements in the documents as to the condition of the home or the repairs done or to be done were made and recorded primarily by third parties. The only exceptions are as follows: on two copies of the same document (which I have numbered as pages 5 and 9) there is a notation made by some third person about the nature of the Applicant’s concerns about the home’s condition; in a document I have numbered as page 10, there is a note about part of the contents of a phone conversation some third person had with one of the Applicants as to what repairs were to be done and when this could take place; two almost-identical copies of a document, which I have numbered as pages 11 and 12, have recorded on them what may be the signature of one of the Applicants, as well as a note as to a matter that the Applicants are said to have agreed to. (The latter 2 documents may or may not be what the Organization refers to in para 2 of its rebuttal submission as a “work order that one or more of the Applicants signed”.)

[para 11] A number of cases have addressed the question of whether information about someone’s home or property or other physical possessions is information “about” them, and is thus their personal information. It is not out of the question that information about

the physical premises in which a person resides, or the state of repair of premises that they own, could be information “about” them.

[para 12] Thus, for example in a decision of the Privacy Commissioner of Canada, PIPEDA Case Summary #349, the following findings were made:

- While the company did not generally view the information in these photographs as personal information (although it could acknowledge that some of the photographs revealed personal information), the Assistant Commissioner felt that they did contain information of a personal nature.
- For example, she noted that, while the purpose of a particular photograph might be to show the state of the walls or the condition of a kitchen or bathroom of a certain unit, it also revealed information about the unit dweller and his or her standard of living. It might show whether they are tidy or not, whether they can afford expensive media equipment or not, whether they love music, or art, or cooking.
- ...
- The Assistant Commissioner therefore concluded that the information at issue was information about an identifiable individual, and was personal information for the purposes of the *Act*.
- The Assistant Commissioner noted that the purpose was not to photograph the contents of the unit but rather to record the state of the unit. Nevertheless, she was of the view that the company ought to have been cognizant of the fact that by photographing the units, it might also be collecting the personal information of the people dwelling in those units. Moreover, she considered that the company ought to have been sensitive to the fact that people consider their homes, above all, to be a very private sphere.

[para 13] The question of whether information about property can be personal information has also been considered in some orders of the Office of the Ontario Information and Privacy Commissioner. In Order M-15 (1992), Commissioner Wright considered whether “copies of work orders which have been issued ... against various rental residential properties” were personal information. He stated:

In Order 23, dated October 21, 1988, former Commissioner Sidney B. Linden dealt with several appeals arising from requests for estimated market values of all properties in Metropolitan Toronto, together with the municipal address of each property. In those appeals, the Ministry of Revenue claimed that such information should not be disclosed as disclosure would constitute an unjustified invasion of personal privacy. The first issue considered in Order 23 was whether the information sought was personal information. Former Commissioner Linden stated the following:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the Act, which defines "personal information" as "... any recorded information about an identifiable individual ...". In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e., the municipal location of a property and its estimated market value, about an

identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.

I am in agreement with the reasoning of former Commissioner Linden. It follows that the information concerning repairs to be made to properties which is contained in the records in issue in this appeal is information concerning the property and is not "personal information."

... Therefore, I am of the view that the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act.

[para 14] However, in other circumstances, somewhat similar information has been held to constitute personal information. Order MC-020007-1 (2002) includes the following comments:

... The complainant states that information related to the property is one and the same as information about him.

In Investigation Report I94-079M, then Assistant Commissioner Ann Cavoukian reviewed Orders M-15 and M-176 prior to coming to her conclusion regarding whether a work order against a property amounted to constituting personal information of the owner. The report states:

The records at issue in M-15 were copies of work orders which had been issued by a municipality against various residential rental properties. Commissioner Tom Wright concluded that "... the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act."

In M-176, Inquiry Officer Holly Big Canoe stated: "I find that the fact of being identified as responsible for the alleged unlawful condition of a property is 'other personal information' for the purposes of subparagraph (h) of the definition ..."

Based on the above, we concur with the Municipality that the municipal address of the complainant's property and the infractions against it did not constitute "personal information", as defined in section 2(1) of the Act.

However, it is also our view that the complainant's name together with the fact that he owned the property in question, that he had allegedly requested that the order for non-compliance with the zoning by-law be delayed because of his upcoming candidacy, and that he was identified as being responsible for the alleged unlawful condition of the property met the requirements of paragraph (h) of the definition of personal information in section 2(1) of the Act.

...

The complainant's name together with the fact that he owned the property

in question, ... and that he was identified as being responsible for the alleged unlawful condition of the property was "personal information", as defined in section 2(1) of the Act.

I concur with the analysis of Investigation Report I94-79M.

[para 14] More recently, in Ontario Order MO-2053 (2006), J. Higgins, Senior Adjudicator, reviewed a number of the Ontario decisions and then stated:

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.

[para 15] I agree with Adjudicator Higgins' summarizing comment. The conclusion I draw from the cases is that information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements.

[para 16] In this case, there is nothing in the documents which does this. Only the small portion of the information that is the Applicants' names, address and telephone numbers, as well as their statements about the work that should be done and when it is to be done, is the Applicants' personal information, and only that information is responsive to a properly-limited request for access to personal information under the Act. (I have numbered the documents as pages 1 to 13, and have highlighted the personal information, which appears on pages 3, 4, 5, 7, 8, 9, 10, 11, 12 and 13.)

[para 17] As the remaining information about inspections and work that was done or was to be done is not personal information within the terms of the Act, the Organization is not obliged to provide it on an access request.

[para 18] I recognize that the items of information described at para 16 are likely not the information the Applicants were seeking in making their request, and it may not be important to them to have access to it. It is, nonetheless, the only information for which they have asked to which they are entitled. As they made the request, the Act requires that the Organization provide it to them, unless some other exception applies.

Issue B: Did the Organization properly apply section 24(2)(b) of the Act (confidential information of a commercial nature) to the records/information?

[para 19] As just noted, the only parts of the information in the documents that need to be considered under this heading are the minor items consisting of the Applicants' personal information, as described at para 16 above. (The remaining information does not need to be provided in any event).

[para 20] Section 24(2)(b) provides:

(2) An organization may refuse to provide access to personal information under subsection (1) if

(b) the disclosure of the information would reveal confidential information that is of a commercial nature and it is not unreasonable to withhold that information;

[para 21] The Applicants' property was the subject of commercial work done by the Organization or its contractors, and in this sense their names and address and their concerns about their property has a commercial aspect. However, this fact does not, in my view, bring these minor items of information within the terms of section 24(2)(b). The information is not confidential as against the Applicants, as they themselves provided it. For this reason, it does not meet the requirement of the provision that the information be "confidential information". For the same reason, it would be unreasonable to withhold this information from the Applicants.

Issue C: Did the Organization properly apply section 24(2)(c) of the Act (investigation or legal proceeding) to the records/information?

[para 22] Again, the only parts of the information in the documents that need to be considered under this heading are the minor items consisting of the Applicants' personal information, as described at para 16 above.

[para 23] Section 24(2)(c) provides:

2) An organization may refuse to provide access to personal information under subsection (1) if

(c) the information was collected for an investigation or legal proceeding;

[para 24] This section does not apply. According to the evidence of the Organization (Summary of Facts in its initial brief), the information, in the form of work orders and completion notices, was collected for the purpose of effecting the repair work (which was to be done pursuant to a Conciliation Report and the outcome of an arbitration), not for

the purpose of a legal proceeding. Therefore, 24(2)(c) cannot be relied on for withholding this information.

V. ORDER

[para 25] I make this Order under section 52 of the Act.

[para 26] I order the Organization to provide to the Applicants the parts of the documents that consist of the personal information described at para 16 (as highlighted in a copy of these documents which I provide to the Organization together with this decision). The Organization has no obligation to provide the remaining information on these documents.

Christina Gauk, Ph.D.
Director of Adjudication