



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-364

Appeal P-9200052

Ministry of Agriculture and Food



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ORDER

The Ministry of Agriculture and Food (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to a report that was prepared by a staff veterinarian about a cattle farming operation. The Ministry denied access to the report pursuant to section 21(1) of the Act, and the requester appealed the decision.

Attempts to mediate the appeal were not successful, and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry, and the owners of the cattle farming operation (the affected persons). Written representations were received from all parties.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the record contains information that would qualify as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the record contains information that would qualify as "personal information", as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

In their representations, the affected persons assert that the record is a "personal document". The Ministry concurs, and states in its representations:

The record that was requested is a report describing the history, inventory, health, management and condition of assets owned by [the affected persons].

...

The report, including the "Recommendation" and "Discussion" sections, reveals the details of the condition and potential value of the assets. This relates directly to the net worth of [the affected persons].

The Ministry submits that the prospect for return on investment for the cattle herd in this case is comparable in principle to any other portfolio of financial assets; the cattle represent inventory which can be traded, pledged or sold in the course of the operation of the herd.

The appellant, on the other hand, submits that details of herd management are not properly considered to be "personal information" for the purposes of the Act".

The record relates to the affected parties' cattle farming operation and, as such, contains information related to a business. The question of whether information about a business can be considered personal information has been canvassed in previous orders. In Order 16, former Commissioner Sidney B. Linden made the following general statement:

The use of the term 'individual' in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended 'identifiable individual' to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

However, Commissioner Linden went on to state in Order 113 that:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

Having reviewed the record and the representations provided by the various parties, I feel that this appeal represents the type of exceptional circumstance envisioned by Commissioner Linden in Order 113. The affected parties in this appeal are a couple who own the cattle farming operation which is described in the record. They are in the business of buying and selling cattle, and their livelihood depends to a large extent on the health and condition of their herd. The record contains detailed information about the history, management and health of their cattle, including a description of all purchases and sales made over a two year period. In my view, there is a sufficient nexus between the affected parties' personal finances and the contents of the report to properly consider the information contained in the record to be the personal information of the affected persons. Therefore, I find that the record qualifies as the personal information of the affected persons under section 2(1) of the Act, in the particular circumstances of this appeal.

ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and 21(3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to be an unjustified invasion of personal privacy. In its representations the Ministry specifically claims that section 21(3)(f) applies to the whole record. This section reads as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The affected persons also raise section 21(3)(f). The appellant makes no specific reference to any of the enumerated subsections in 21(2) or (3) in his representations.

I agree with the position put forward by the Ministry and the affected persons. The record at issue describes the assets of the affected parties, as well as their financial history and/or activities. Accordingly, I find that the requirements for a presumed unjustified invasion of the personal privacy of the affected persons under section 21(3)(f) have been established.

Once it has been determined that a presumed unjustified invasion of personal privacy under section 21(3) exists, I must then consider whether any other provision of the Act comes into play to rebut this presumption. Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, the records do not contain any information relevant to section 21(4).

I have also carefully considered the provisions of section 21(2) and, in my view, there is no combination of factors listed in section 21(2) which would operate to rebut the presumption of an unjustified invasion of personal privacy.

Therefore, in the circumstances of this appeal, I find that the disclosure of the information contained in the record would constitute an unjustified invasion of the privacy of the affected parties.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

November 10, 1992