



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

ORDER P-370

Appeal P-9200451

Ministry of Natural Resources



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Ministry of Natural Resources (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to copies of correspondence between an identified individual and the Ministry, in which the requester had been referred to by name. The Ministry decided to grant access to those parts of the correspondence in which the identified individual expressed opinions about the requester, and notified the identified individual of its decision. In response, the identified individual requested access to the name of the original requester. The Ministry contacted the original requester who advised that he or she wishes to remain anonymous. The Ministry refused to inform the identified individual of the name of the original requester, relying on section 21 of the Act. The identified individual appealed the Ministry's decision to deny access to the name of the original requester.

Mediation of the appeal was not possible and notice that an inquiry was being conducted to review the Ministry's decisions was sent to the Ministry, the appellant, and the original requester. Written representations were received from all parties to the appeal.

ISSUES:

The issues arising in this appeal are:

- A. Whether the name of the original requester qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the name of the original requester qualifies as "personal information" as defined in section 2(1) of the Act.

"Personal information" is defined, in section 2(1) of the Act in part, as follows:

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

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In Order 27, former Commissioner Sidney B. Linden stated that while a name alone cannot be considered personal information, where a name appears in the context of a request for access to information under the Act, disclosure of the name would reveal both the fact that the original requester made a request under the Act and the nature of the request. Commissioner Linden found that this rendered the name of the requester "personal information" as defined in the Act. I agree, and find that the original requester's name qualifies as the original requester's personal information.

ISSUE B: Whether the mandatory exemption provided by section 21 of the Act applies.

The Act does not provide explicitly for the disclosure of the name of a requester where the requester has requested access to information concerning another individual or entity. In Order 27, Commissioner Linden stated that the fact that the Act is silent as to whether the name of a requester may be disclosed should not be interpreted as a prohibition. He found that the Act does not specifically or impliedly impose a general rule of non-disclosure of the names of requesters. He suggested that the fairest approach in adjudicating the issue would be to weigh any competing rights of the requester and any other parties. I agree.

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) of the Act reads as follows:

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 (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the person to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The original requester's name does not conform to any of the types of information listed in section 21(3). I find therefore that no presumption of an unjustified invasion of the personal privacy of the original requester exists.

Section 21(2) provides some criteria which must be considered in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. The Ministry makes specific reference to section 21(2)(e), which provides:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

In its representations, the Ministry submits that the release of the name of the original requester would expose that person unfairly to pecuniary or other harm pursuant to section 21(2)(e). The original requester has also requested anonymity and feels that harm may result should his or her name be released to the appellant. Because of the nature of the Ministry's evidence and that of the original requester in support of the application of section 21(2)(e) might serve to identify the original requester, I am unable to set it out in any detail.

The right of the original requester to anonymity must be balanced against the right of the appellant to know the name of the person who requested access to information which may be comprised of the personal information of both the appellant and the original requester.

I have considered all of the circumstances arising in this appeal and find that, on balance, the disclosure of the name of the original requester would be an unjustified invasion of his or her personal privacy. It is my view that the original requester's interest in maintaining his or her anonymity outweighs the appellant's interest in knowing his or her identity.

ORDER:

I uphold the head's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

November 19, 1992