



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

ORDER P-559

Appeal P-9300113

Ministry of Natural Resources



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial 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 the following information:

- (1) a copy of a wetland assessment report prepared for the Ministry by a named consultant and;
- (2) a complete list of ANSI (Areas of Natural and Scientific Interest) landowners in Grey and Bruce counties outlining those who have been contacted regarding the ANSI designation and those who were not contacted regarding the ANSI designation of their property.

The Ministry provided the requester with access to records responsive to Item 1 of his request but denied access to the record responsive to Item 2 pursuant to section 21 of the Act. The requester appealed the decision to deny access.

During mediation, the appellant withdrew his request for information relating to whether ANSI landowners had been notified by the Ministry. The Ministry then agreed to provide the appellant with access to the list compiled by the Ministry of "provincially significant ANSI properties", with the names and addresses of all owners who are natural persons deleted. The record at issue, therefore, is the list compiled by the Ministry which includes the names and addresses of all ANSI landowners in Grey and Bruce Counties who are natural persons.

Mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the Ministry and the appellant. Representations were received from both parties.

PRELIMINARY ISSUE:

The information at issue is the names and addresses of ANSI landowners in Grey and Bruce Counties who are natural persons. The entire record consists of a list of approximately 1900 names and addresses. The appellant and the Ministry agreed that a smaller portion would be taken as being representative of the information requested and the decision reached on this portion of the record will be applicable to the entire record.

ISSUES:

The issues in this appeal are as follows:

- A. Whether the information contained in the record qualifies 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 to the record.

SUBMISSIONS/CONCLUSIONS:

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

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

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

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(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;

As noted above, the information at issue is the name and address of all owners who are natural persons which appear on a list compiled by the Ministry of provincially significant ANSI properties. In my view, the information in question clearly qualifies as the personal information of the ANSI landowners, who are identifiable individuals, under subparagraphs (d) and (h) of the definition above.

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

Under Issue A, I found that the record contains the personal information of identifiable individuals. Once it has been determined that a record contains personal information, section

21(1) of the Act prohibits the disclosure of this personal information, except in certain circumstances. Specifically, sections 21(1)(c) and (f) of the Act state:

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

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

In order for the "public record" exception described in section 21(1)(c) of the Act to apply, it must be demonstrated that the personal information was "collected and maintained **specifically** for the purpose of creating a record available to the general public". The appellant has established that he was able to access this information from another source, which may demonstrate that the information is, to some extent, a publicly available record. However, I have not been provided with any evidence to indicate that the personal information was collected and maintained **specifically** for the purpose of creating a public record available to the general public, as is required for section 21(1)(c) of the Act to apply. Accordingly I find that the exception provided by section 21(1)(c) has no application in the circumstances of this appeal.

Section 21(1)(f) of the Act describes a further exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 21(1)(f) exception applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the personal privacy of the individuals to whom this information relates.

Sections 21(2), (3) and (4) 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 constitute an unjustified invasion of personal privacy. Neither of the parties have raised any of the presumptions contained in section 21(3), and I find that this section is not relevant in the circumstances of this appeal. Similarly, none of the considerations listed in section 21(4) are applicable to this appeal.

Section 21(2) lists a series of circumstances to be considered in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Some of the considerations favour disclosure of personal information while others favour protection of personal privacy. In interpreting section 21(2), all the relevant circumstances of the case must be considered, not only the factors enumerated in the section.

In his representations, the appellant makes reference to sections 21(2)(a), (b), (c), (d) and (e) to support the proposition that the release of the personal information would not constitute an unjustified invasion of personal privacy. These sections state:

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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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

I have summarized the appellant's position regarding the relevance of these considerations below:

- (a) The appellant's request subjects the activities of the Government of Ontario to public scrutiny.
- (b) Being provided with this list might very well promote public health and safety because everyone in Grey and Bruce has probably heard of the ANSI designation, but very few have checked to see whether there is an ANSI designation on their property.
- (c) The appellant feels he is promoting informed choice in the purchase of goods and services, especially when an individual may want to buy a piece of land in Grey or Bruce Counties.
- (d) Everyone has the right to know where these ANSI designations are and who is subject to their limitations.
- (e) Property owners listed will be harmed individually as the very fact of the ANSI designation may devalue his property.

The above-noted submissions are prefaced by the appellant's statement that not all owners of ANSI properties have been notified of the designation of their property as such by the Ministry.

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Other than making the assertion that section 21(2)(a) of the Act is applicable to the facts of the appeal, the appellant provides no evidence in support of his claim that disclosure of the record would subject "the activities of the Government of Ontario and its agencies to public scrutiny". Therefore, I find that section 21(2)(a) is not a relevant consideration in the circumstances of this appeal.

Insofar as the application of section 21(2)(b) of the Act is concerned, the appellant has not demonstrated how the disclosure of the personal information may "promote public health and safety". Accordingly, I find that section 21(2)(b) is not a relevant consideration.

In his representations, the appellant also makes reference to the promotion of informed choice among potential purchasers of land in Grey and Bruce Counties as being a consideration which should weigh in favour of the disclosure of the personal information contained in the record. I am unable to agree that there exists a real connection between the disclosure of the personal information sought and promotion of informed choice among possible purchasers of land in the counties. Therefore, I find that section 21(2)(c) of the Act is not a relevant consideration in this appeal.

The appellant has also failed to demonstrate that the disclosure of the personal information is relevant to a fair determination of **his** rights, as is required by section 21(2)(d) of the Act. This circumstance, therefore, cannot be considered as relevant when weighing the interests of the right to access by the appellant against the privacy interests of the landowners.

Similarly, I have not been provided with evidence sufficient to establish that landowners would suffer pecuniary or other harm if the personal information contained in the record was not disclosed. Section 21(2)(e) is not intended to weigh in favour of the release of personal information, rather it weighs in favour of privacy protection. Accordingly, I find that section 21(2)(e) is not a relevant consideration in the circumstances of this appeal.

The list of considerations in section 21(2) of the Act is not meant to be exhaustive. I will, therefore, address the other circumstances raised by the appellant to support his view that the personal information should be disclosed. In his representations, the appellant indicates that the Ministry has not notified a large number of owners of ANSI-designated properties of this designation. Such a designation, in the opinion of the appellant, along with information concerning the possible concomitant right to tax relief, should be communicated to all ANSI owners. The appellant states that disclosure of the personal information contained in the record will enable these persons to become aware of the designation of their property and make application for a tax rebate available to some ANSI owners.

In its representations, the Ministry indicates that where an ANSI is on private lands, the Ministry informs landowners of this fact and these owners may be entitled to a tax rebate if they agree to protect the ANSI on their property.

Again, in my view, the appellant has failed to establish the necessary relationship between the disclosure of the personal information and the benefit which will accrue to the owners of ANSI-designated land. This circumstance is not a sufficiently relevant consideration to weigh in favour of the disclosure of the personal information.

In conclusion, I am not satisfied that the disclosure of the personal information would **not** constitute an unjustified invasion of the personal privacy of the landowners. Therefore, the mandatory exemption provided by section 21(1) of the Act applies to prevent the disclosure of the personal information contained in the record.

ORDER:

I uphold the Ministry's decision not to disclose the record.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 22, 1993