



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

ORDER P-1173

Appeal P-9600025

Ministry of Environment and Energy



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NATURE OF THE APPEAL:

The Ministry of Environment and Energy (the Ministry) received a three-part request under the Freedom of Information and Protection of Privacy Act (the Act) for access to:

1. a complete mailing list of all licenced pesticides applicators;
2. a complete mailing list of all licenced pesticides operators; and
3. monthly updates noting any additions to these mailing lists.

The requester is the Executive Director of a newly established association of pesticide applicators, who wants access to the mailing list in order to initiate contact with all potential association members throughout the province.

Based on my review of the various documents submitted during the course of this appeal, it would appear that the terms “applicator” and “exterminator” are interchangeable, and I will use the term “applicator” to cover both.

The Ministry agreed to release the one record responsive to part 2 of the request, upon payment of a \$7 fee. The requester paid this fee and the record was disclosed.

As far as part 3 is concerned, the Ministry informed the requester that it was not possible to produce a list of monthly updates of the part 2 record with its existing computer program, but offered to provide the requester with a fee estimate for the cost of programming such a list. The requester did not pursue this part of his request, and it is not at issue in this appeal.

In response to part 1, the Ministry identified responsive information located in three Ministry databases, and denied access to this information on the basis of the following exemptions contained in the Act:

- valuable government information - section 18(1)(a)
- invasion of privacy - section 21(1)

The requester (now the appellant) appealed the Ministry’s decision with respect to part 1 of his request.

Mediation was not successful, and a Notice of Inquiry was sent to the appellant and the Ministry. Because the appellant raised the possible application of the so-called “public interest override”, section 23 was included in the Notice. Representations were received from both parties.

In its representations, the Ministry specifically declined to provide any submissions on the section 18(1)(a) exemption claim. Because section 53 of the Act places the burden of proof on the Ministry to establish the requirements of this and other exemption claims, I find that this burden has not been discharged in the circumstances of this appeal, and information responsive to part 1 of the request does not qualify for exemption under section 18(1)(a) of the Act.

PRELIMINARY ISSUE

During the course of mediation, the appellant alleged that a mailing list of pesticide applicators had previously been disclosed by the Ministry to a different named organization. The appellant was asked in the Notice of Inquiry to provide evidence in support of this allegation, and the Ministry was asked to comment on its accuracy.

The appellant's representations provide no evidence to support his allegation.

According to the Ministry's representation, it is unaware of any such mailing list being made available, and points out that this would be contrary to both Ministry policy and to the purpose of the collection of registration data as stated on the licence application form submitted by all applicators.

Based on the evidence before me in this appeal, I find that the issue of prior equivalent disclosure is not relevant.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including

- (d) the **address**, telephone number, fingerprints or blood type of the individual, (emphasis added)

The Ministry provided me with three samples selected from the approximately 18,000 applicator licence forms which contain the information responsive to the appellant's request. Among other things, these records contain the name and home address of individual licenced pesticide applicators, which I find to be clearly the personal information of these individuals.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2), as well as all other circumstances that are relevant in the circumstances.

Having reviewed the sample records provided by the Ministry, I find that none of the presumptions in section 21(3) apply.

The Ministry states that when individuals submit applications for an applicator's licence, they complete a form which includes their name, address and other personal information. Each application form includes a notice provision in accordance with section 39(2) of the Act, informing the applicants that this personal information is being collected for the purpose of evaluating licence applications according to the requirements of the Pesticides Act. The Ministry submits that this manner of collection gives rise to a reasonable expectation that the information would otherwise be treated confidentially. I agree, and find that section 21(1)(h) is a relevant consideration in favour of privacy protection.

The appellant's lengthy representations do not appear to address the requirements of section 21(2) directly. However, some of his correspondence to the Ministry at the time of his request touch on the personal privacy issue. Specifically, he states:

[The Ministry's] proposed, and existing legislation information, is vital knowledge, not optional knowledge as licence holders are required by law, in the interest of public safety and health, to fully conform to any and all legislation as it pertains to their licence class(es) under the Pesticides Act and Regulations. It is for that reason [the Association represented by the appellant's] request is not an unjustifiable invasion of personal privacy.

This statement raises the possible application of section 21(2)(b).

The gist of the appellant's argument, as I understand it, is that the Ministry has failed to personally notify all applicator licence holders in the context of the proposed new licencing requirements under the Pesticides Act and regulations. Due to the large number of licenced applicators, the notification process chosen by the Ministry was a posting on the Environmental Registry administered by the Environmental Commissioner, which, in the appellant's view was inadequate and ineffective. The appellant feels that individual applicators have not been provided with adequate notice of changes to the licencing system which have a direct impact on their continued ability to work in this occupation, and disclosure of the mailing list of names and addresses is necessary in order to permit the appellant to provide actual notice to these individuals.

In the Ministry's view, changing the requirements for licencing will better protect the health and safety of the general public and users of pesticides, and the Ministry submits that section 21(2)(b) is not relevant.

It is obvious that the appellant and the association he represents take great exception to the manner in which the Ministry has approached changes to the applicator licencing system. However, I am not in a position to address all of these concerns, and it is important to state that my jurisdiction is restricted to determining whether or not any of the exemptions claimed by the Ministry have been established.

Having reviewed the representations of both parties, in my view, the appellant has not provided sufficient evidence to link disclosure of the mailing list to the actual promotion of health and

safety, and I find that section 21(2)(b) is not a relevant consideration in the circumstances of this appeal.

I have found one relevant factor under section 21(2) favouring privacy protection and no factors favouring disclosure. Therefore, I find that the requirements of section 21(1)(f) have not been established, and the mandatory exemption provided by section 21(1) of the Act applies to prevent disclosure of all personal information responsive to part 1 of the request.

PUBLIC INTEREST IN DISCLOSURE

Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a competing public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

There are two requirements contained in section 23 which must be satisfied in order to involve the application of the so-called “public interest override”; there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant’s representations provide a very detailed outline of his concerns regarding how the government has proceeded with proposed changes to the licencing process under the Pesticides Act, and the extensive efforts he has used to make the government aware of his position. To say that he and his organization are not satisfied with these changes, and particularly with the level of consultation undertaken with individual applicators, would be an understatement. However, the appellant has not provided representations directly responsive to the requirements that must be established in order for section 23 to apply.

The Ministry submits that the appellant has a private rather than a public interest in being provided with the mailing list information, namely, to contact those on the list for membership in the newly created association. In the Ministry’s view, it has provided the applicators with sufficient notice and details of the proposed licencing changes by placing the amendments on the Environmental Registry and through other meetings with operators and associations involved in the pesticides industry, including the appellant.

Although it might be argued that the appellant’s interest in receiving access to the mailing list of applicators is not exclusively private, in my view, the appellant has not provided sufficient evidence to demonstrate the existence of a **compelling** public interest in disclosure of this information, nor that disclosure of mailing list information would clearly outweigh the purpose of the mandatory section 21 exemption claim.

Therefore, I find that section 23 does not apply in the circumstances of this appeal.

ORDER:

I uphold the Ministry’s decision not to disclose the names and address of licenced applicators.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ April 26, 1996