



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

ORDER P-213

Appeal 890335

Ministry of Natural Resources



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January 16, 1991

VIA PRIORITY POST

Appellant

Dear Appellant:

Re: Order P-213
Appeal No. 890335
Ministry of Natural Resources

This letter constitutes my Order in your appeal of the decision of the Ministry of Natural Resources (the "institution"), to refuse to confirm or deny the existence of a record requested under the Freedom of Information and Protection of Privacy Act, 1987, as amended (the "Act"). On January 5, 1990, the undersigned was appointed Assistant Commissioner and received a delegation of the power to conduct inquiries and make Orders under the Act.

On June 27, 1989, you wrote to the institution requesting access to:

Hunting licence check of [a named individual], [a named address]. Verify if above had an antlerless deer permit valid for wildlife management unit number 63, for the year 1988.

On July 17, 1989, the institution responded to your request by indicating that the existence of the requested record could not be confirmed or denied, pursuant to subsection 21(5) of the Act.

You subsequently wrote to this office to appeal the institution's decision. Notice of Appeal was given to you and to the institution on November 10, 1989.

As you know, when your appeal was received, an Appeals Officer was assigned to investigate the circumstances of the appeal and to attempt to mediate a settlement. The institution contacted the person named in your request (the "affected person") and he expressed the view that disclosure to you of information as to whether or not he had an antlerless deer permit would constitute an unjustified invasion of his personal privacy.

As settlement of the appeal could not be effected, notice that an inquiry was being conducted to review the decision of the head was sent to you (the "appellant"), to the affected person, and to the institution. All parties were invited to make representations. The institution has provided written representations and I have considered those representations in making this Order. Neither you nor the affected person made representations.

Before beginning my discussion of the specific issues arising in the appeal, I think it would be useful to outline the purposes of the Act as set out in section 1. Subsection 1(a) provides a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and that necessary exemptions from the right of access should be limited and specific. Subsection 1(b) sets out the counterbalancing privacy protection purpose of the Act. This provides that the Act should protect the privacy of individuals with respect to personal information about themselves held by institutions, and should provide individuals with a right of access to their own personal information.

Further, section 53 of the Act provides that the burden of proof that a record, or a part thereof, falls within one of the specified exemptions in the Act lies with the head of the institution.

The issues in this appeal are as follows:

- A. Whether the requested information, if it existed, would qualify as "personal information", as defined in subsection 2(1) of the Act.
- B. Whether the requested information, if it existed, would qualify for exemption from disclosure pursuant to subsection 21(1) of the Act.
- C. If the answer to Issue B is in the affirmative, whether the head properly exercised his discretion under subsection 21(5) of the Act, by refusing to confirm or deny the existence of the requested information.

ISSUE A: Whether the requested information, if it existed, would qualify as "personal information", as defined in subsection 2(1) of the Act.

In all cases where a request involves access to personal information, it is my responsibility to determine whether the information sought would fall within the definition of "personal information" under subsection 2(1) of the Act. "Personal information" is defined as follows:

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (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;

The Directory of Records for 1990 reveals that the institution has identified "Hunting Licences" as a type of personal information bank maintained by it and further identifies the nature of the personal information that would be maintained in a hunting licence personal information bank as "licensing and administration data for game hunting". A "personal information bank" is defined in the Act as "a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual".

In my view, the name of an individual together with information as to whether he or she was the holder of a permit or licence would amount to "personal information" within the meaning of subsection (h) of the definition of personal information. I am therefore satisfied that the requested information, if it existed, would be personal information as defined in subsection 2(1) of the Act.

ISSUE B: Whether the requested information, if it existed, would qualify for exemption from disclosure pursuant to subsection 21(1) of the Act.

Section 21 of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances. In my view, the only such circumstance which could apply here is contained in subsection 21(1)(f) of the Act which reads as follows:

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

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Guidance is provided in subsection 21(2) of the Act with respect to the determination of whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Subsection 21(2) of the Act reads as follows:

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;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) The personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The institution submits that, in reaching its decision, it considered subsections 21(2) (d), (e), (f) and (g) and found that, on balance, (e) and (f) apply to the facts of this appeal. The institution summarized the reasons for its view that information as to whether an individual has a hunting licence or a deer permit is personal information. The institution went on to argue that disclosure of this type of information, if it existed, could result in harm such as harassment or exposure to an increased risk of burglary. The institution concluded its representations by arguing that it was not persuaded that disclosure of the requested information, if it existed, is relevant to a fair determination of rights affecting you.

I have concluded that disclosure of the personal information, if it existed, would constitute an unjustified invasion of personal privacy. In reaching my decision, I have taken into

consideration the institution's representations, the circumstances associated with this appeal, and all of the circumstances set out in subsection 21(2) of the Act.

I have also taken into account the two broad purposes of the Act - that information should be available to the public and that the privacy of individuals should be protected when it comes to personal information about individuals held by institutions. In my view, the fact that an institution may hold personal information about an individual should not mean that this information is available simply for the asking. Each request that is made by someone for personal information about someone else must be considered on its own merits in accordance with the principles contained in the Act.

ISSUE C: If the answer to Issue B is in the affirmative, whether the head properly exercised his discretion under subsection 21(5) of the Act, by refusing to confirm or deny the existence of the requested information.

Subsection 21(5) of the Act reads as follows:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

This subsection gives a head the discretion to refuse to confirm or deny the existence of a record, if it has been established that disclosure of the information sought would constitute an unjustified invasion of personal privacy. Under Issue B, I found that disclosure of the requested information, if it existed, would be an unjustified invasion of personal privacy.

In any case in which the head has exercised his/her discretion and refused to confirm or deny the existence of a record, I look very carefully at the manner in which the head has exercised this discretion. Provided that this discretion has been exercised in accordance with established legal principles, it should not, in my view, be disturbed on appeal.

In this case, it is my view that there was nothing improper in the head's exercise of his discretion and I therefore uphold the head's decision to neither confirm nor deny the existence of the record.

In closing, I wish to make it clear that although I have found that disclosure of the personal information at issue in this appeal, if it existed, would constitute an unjustified invasion of personal privacy, my conclusion should not be taken as an indication that information of the type at issue in this appeal should never be disclosed. Each request for personal information must be evaluated on its own merits with decisions on disclosure made on a case-by-case basis.

Yours truly,

Tom A. Wright
Assistant Commissioner

cc: The Honourable C.J. (Bud) Wildman
Minister of Natural Resources

Ms Cathy Waiten, FOI Co-ordinator

The affected person