



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-1893

Appeal PA_990187_2

Ministry of Northern Development & Mines



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NATURE OF THE APPEAL:

The Ministry of Northern Development and Mines (the Ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

Please accept this as our formal request under the [*Act*] to provide us with the following information on all leases for mining and/or surface rights in Ontario which are presently in existence or which were in existence immediately prior to the introduction of the New Mining Act:

- Lease Number
- Claim number for which the lease applies
- Number of hectares/acres covered by the lease
- Location of Lease ie: Township and Mining Division
- Date of creation of lease
- Duration of lease
- Name of Lease Holder
- Address of Lease Holder
- Telephone number of Lease Holder
- Fax number of Lease Holder

...

The Ministry responded by advising the requester that it “is not prepared to search for and compile [the requested] information since it is currently a matter of public record in the Land Registry Office, and to some extent through the Tax Rolls and the Ontario Gazette”. The Ministry went on to indicate that under section 22(a) of the *Act*, the Ministry may refuse to provide records and information that are currently available to the public.

The Ministry also advised the requester that some of the requested information, specifically the telephone and fax numbers, cannot be obtained from any source.

Finally the Ministry advised the requester that “if the Ministry were to take on the task of searching for and compiling the information ... the approximate cost would be \$18,500”. The Ministry also indicated that some personal information could not be disclosed. The Ministry went on to indicate however that “the information you are seeking is a matter of public record, and the Ministry is not prepared to undertake this task”.

The requester, now the appellant, appealed the Ministry’s decision.

During the mediation stage of the appeal, the Ministry explained that certain information relating to mining leases that are presently in existence in Ontario is stored in the Ministry’s “MILAD” database.

During a teleconference involving the appellant, the Ministry and the Mediator, the appellant narrowed the scope of his request to include only the following information contained in the MILAD database:

1. names and address of all individuals and companies who hold mining leases in Ontario;
2. mining lease numbers;
3. the main contacts (not necessarily the owner or the only owner where there are multiple owners);
4. the addresses for the main contacts; and
5. district in which the subject property of each lease is located.

The parties agreed that this information would be produced in the form of a report generated by the software "Crystal Reports" accessing the MILAD database, listing the leases in order of the Districts.

As a result of the narrowed request, the Ministry issued a revised interim decision and a fee estimate advising the appellant that "the Ministry must sever from the report any personal information such as names and addresses where the contact person/owner is an individual rather than a corporate owner or the business representative of a corporate owner", in accordance with section 21 of the *Act*. The Ministry went on to indicate that the fee estimate for the revised request is \$178.20. The appellant paid the Ministry the requested fee.

Prior to the Ministry producing the requested report, the appellant asked that the information which he is seeking be broken down by townships, rather than districts. The Ministry agreed to generate a report in this fashion.

Subsequently, the Ministry explained that the information relating to companies that hold mining leases may contain residential addresses, as some of these companies operate out of the owners' homes. In turn, the Mediator raised the possible application of sections 2(1) (personal information) and 21(1) (invasion of privacy) of the *Act* to the residential addresses.

Subsequently, the Ministry generated three reports which are entitled: (1) Active Leases Held by Individuals; (2) Active Leases Held by Companies; and (3) Contact. The Ministry provided the appellant with partial access to the last two reports.

Prior to the completion of mediation, the appellant amended the scope of his request with respect to individuals who hold mining leases, to include claim numbers with respect to each mining lease. The Ministry did not take any issue in this regard.

Therefore, with respect to individuals who hold mining leases, the appellant is seeking the following information:

1. names and addresses of the individuals;
2. lease numbers;
3. claim numbers; and
4. township in which the subject property of each lease is located.

The Ministry confirmed that it is possible to generate a report containing this information.

Subsequently, the appellant requested that the Ministry generate the above-mentioned report relating to individuals who hold mining leases as soon as possible, as he would like to capture this information as it currently exists in the Ministry's database. The Ministry, however, advised the Mediator that it is not agreeable to producing this report, unless the Adjudicator decides it is necessary for the Ministry to do so. On December 21, 2000, I provided the Ministry with a letter requiring the production of this report in both paper format and on disc by January 12, 2001 in order to ensure the proper adjudication of this appeal and to preserve the requested information. The Ministry provided this information to me on January 8, 2001 and it has been designated as Record 4 in the appeal.

I prepared and sent to the Ministry a Notice of Inquiry setting out the facts and issues in the present appeal. The Ministry provided me with its submissions, which were shared with the appellant, except two paragraphs which were withheld due to concerns about confidentiality. The Ministry indicated that it is prepared to disclose, in their entirety, Records 1, 2 and 3, as well as any information contained in Record 4 which relates only to the appellant. The Ministry takes the position that only certain information contained in Record 4 which relates to other identifiable individuals other than the appellant is "personal information" within the meaning of section 2(1) of the *Act* and is, therefore, exempt from disclosure under sections 21(1) and 49(b).

The appellant also made submissions in response to the Notice of Inquiry which I provided to him and indicated that he is no longer seeking access to the information contained in Record 1 as it has now been replicated in Record 4 in a more accessible and useable form. Record 1 is, accordingly, no longer at issue in this appeal. The appellant also raised the possible application of section 23 to the information at issue in this appeal in his representations, which were shared, in their entirety, with the Ministry. The Ministry then made additional submissions by way of reply.

DISCUSSION:

PERSONAL INFORMATION

In order to decide whether the invasion of privacy exemptions in sections 21(1) or 49(b) apply to the information contained in Records 2, 3, and 4, I must first determine whether they contain personal information, as that term has been defined in section 2(1). Because section 21(1) is a mandatory exemption which serves to protect the personal privacy of individuals, I will examine whether this exemption applies to exempt from disclosure the information contained in Records 2 and 3, regardless of the Ministry's position that it does not. I note that some of the information contained in Records 2, 3 and 4 appears to include residential addresses for some of the business entities and private individuals who are included in these documents. The addresses listed are those which were provided by the leaseholders to the Ministry for mailing and notification purposes.

Section 2(1) of the *Act* defines the term "personal information", in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

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, [my emphasis]

Submissions of the Appellant and the Ministry

Both the appellant and the Ministry take the position that Records 2 and 3 do not contain any information which meets the definition of “personal information” contained in section 2(1). Both have provided me with a similar analysis of previous decisions of the Commissioner’s office in which information relating to entities other than natural persons was considered. Beginning with Order 16, former Commissioner Sidney Linden found the information relating to a sole proprietorship, partnership, unincorporated association or corporation does not qualify as “personal information” because the “protection provided with respect to the privacy of personal information relates only to natural persons”.

In Order 113, Commissioner Linden modified this interpretation by stating 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”. In Order P-364, Assistant Commissioner Tom Mitchinson found that the exceptional circumstances described in Order 113 were present with respect to a cattle farm operated by a family. In that case, it was held that there existed a “sufficient nexus between the affected parties’ [the farmers’] 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 parties.”

In Order M-454, former Inquiry Officer John Higgins applied the reasoning described above to information relating to a commercial kennel operation. He found that the special circumstances contemplated in Orders 113 and P-364 were not present with respect to information pertaining to the kennel business. This information consisted of the name, address and telephone number of the business, the name of one of its operators and information relating to a specific incident which occurred there and was found to relate only to the ordinary operations of the business. Former Inquiry Officer Higgins went on to find that the business address and telephone number, even though they were the same as the residential address and telephone number of the business operator, did not qualify as the personal information of the operator. A distinction was made between the home address of an individual who happens to carry on a business and the situation where the business is carried on at a residential address and the records relate to the operation of that business.

The Ministry argues that because Records 2 and 3 in the present appeal do not describe in any way the business activities, finances or incidents involving the leaseholders, the extraordinary circumstances outlined in Order P-364 are not present. Accordingly, the Ministry submits that the information does not qualify as the personal information of any identifiable individual for the purposes of section 2(1).

The Ministry also submits that:

individuals by setting up a corporation to carry out business apart from their personal affairs reasonably expected that in the course of carrying on business, the corporation would be required to disclose basic contact information such as its mailing address and telephone number and the name of a company contact person.

Relying on the reasoning set out in Orders M-189 and 23, the Ministry further argues that:

the meaning of “about” [contained in the definition of the term personal information], in the sense of information about an identifiable individual, is “in connection with or on the subject of”. In Order 23, former Commissioner Linden held that the information at issue, a municipal address and the property’s estimated market value, was information not about an identifiable individual, but about the property. In the present appeal, the Ministry contends that the address information in Record 2 is information about corporations, not an individual.

Similarly, in its representations with respect to Record 3, the Ministry submits that the information in Record 3 is not personal information as:

The individuals are named as contacts or representatives of the listed corporations and any contact data such as telephone or fax numbers is business information. The Ministry relies upon Orders M-189 and P-369. In Order M-189, [former Adjudicator] Holly Big Canoe cited Order P-369 and determined that the names and titles of individuals given in conjunction with a corporation as contact persons, are not personal information, because the individuals are acting in their corporate or business capacity. Following this reasoning, the Ministry submits that the contact information in Record 3 including the telephone and fax numbers is business information, not personal information and it should be disclosed to the appellant.

However, the Ministry submits that the information contained in Record 4, consisting of “the names and addresses of identifiable individuals, the lease number, and claims within these leases held by individuals and the township name in which the leases are located” must be approached differently. It argues that the names and addresses of individuals which are listed in Record 4 clearly fall within the definition of “personal information” contained in section 2(1)(d), though the other information contained in it does not qualify.

The appellant takes the position that the individuals listed in Record 4 are engaged in the mining and exploration business and that the information contained in this record does not, accordingly,

qualify as “personal information” with respect to these individuals. He submits that the individuals engaged in prospecting do so with the expectation that the information which they provide to the Ministry which is reflected in their lease agreements will be shared and made public. For this reason, he submits that the information contained in Record 4 should not be considered to be “personal information” within the definition of that term in section 2(1).

Findings

Records 2 and 3 contain information relating to corporations which hold mining and exploration leases in Ontario. In my view, information “about” a corporation cannot qualify as “personal information” within the meaning of section 2(1) as it is not “about” an identifiable individual. I adopt the reasoning first expressed by former Commissioner Linden in Order 16 to find that information about business entities such as the corporations listed in Records 2 and 3 does not qualify as information about an identifiable individual.

I specifically find that although Record 2 may contain residential addresses which also serve as the addresses of the corporations which hold certain mining leases, this information does not qualify as “personal information” within the meaning of section 2(1)(d). I agree with the position taken by the Ministry above in this regard. Individuals who choose to organize their business affairs by incorporating and creating a new legal entity outside their personal one derive certain benefits from doing so. Individuals take advantage of the vehicle of a corporation for many different reasons, including the ability to limit their liability and to take advantage of certain taxation regimes which are available to corporation but not private individuals. In my view, by choosing to go the incorporation route, individuals relinquish a portion of their privacy rights with respect to some of the business affairs carried on by the corporate entity.

For this reason, I find that the address information contained in Record 2 does not qualify as “personal information” within the meaning of section 2(1)(d). Similarly, the “contact” information contained in Record 3 cannot be said to be the personal information of the individuals listed therein. The names and telephone and fax numbers described in this document relate to these individuals not in their personal capacity, but rather, in their employment or professional capacity only. As such, following the reasoning expressed in a number of orders, including M-189 and P-369, I find that this information does not qualify as “personal information” within the meaning of section 2(1).

Record 4, however, must be approached quite differently. This document contains the name, address, claim and lease number, along with the name of the Township where the lease is registered. Each of the individuals listed in Record 4 is a natural person, not a corporation or other business entity. I agree with the position taken by the Ministry that the names and addresses of the individuals who are leaseholders that is contained in Record 4 qualifies as the personal information of those individuals under the definition of that term contained in section 2(1)(d) and (h). I also agree that the lease and claim number and Township name describe the property which is subject to the lease only and, as such, when taken alone, do not qualify as personal information since it relates only to the property and not to an identifiable individual. Record 4 also contains the personal information of the appellant and the Ministry indicates that it is prepared to disclose this portion of Record 4 to him.

I do not accept the appellant's argument that because the information relates to a mining claim, the information listed in Record 4 is about individuals who are carrying on a business and is not, therefore, personal information. The definition of the term personal information is not limited in the manner suggested by the appellant to include only information not related to business activities.

Accordingly, I find that Records 2 and 3 do not contain any personal information as that term is defined in section 2(1). As no other exemptions have been claimed for this information and no mandatory exemptions apply to them, I find that Records 2 and 3 are not exempt under the *Act* and will order that they be disclosed to the appellant. Record 4, however, contains the personal information of the individuals listed therein, including the appellant. This personal information includes only the name and address of each of the identifiable individuals listed in this document. Because Record 4 contains the personal information of the appellant, along with other identifiable individuals, I will address the application of the discretionary exemption in section 49(b) to it, below.

INVASION OF PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the *Act*, where a record contains the personal information of both the requester and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Section 49(b) of the *Act* introduces a balancing principle. The institution must look at the information and weigh the requester's right of access to his or her own personal information against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the institution the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 49(b) applies, 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 the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption. [See Order PO-1764]

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

The Ministry has relied on the "presumed unjustified invasion of personal privacy" in section 21(3)(f) of the *Act* as Record 4 contains information about the "assets" of an identifiable individual. It relies upon the reasoning in Order PO-1786-I where Assistant Commissioner Tom Mitchinson

held that information relating to the names of individuals who purchased properties, along with the purchase price and location of the land was subject to the presumption in section 21(3)(f). The Ministry submits that the information contained in Record 4 describes the fact that the individuals named in the record hold mining leases, which is an interest in real property, and, therefore, an asset.

The appellant argues that information with respect to a mining lease is not about an "asset" as the lease only grants a right to mine the subject property, no other uses are granted with the lease agreement. He suggests that the lease may, in fact, not have any value at all. In my view, it defies logic to argue that the leases which are described in Record 4 are of no value and cannot be characterized as an "asset". The leaseholders have paid for the right to explore and mine the lands which are subject to the lease, thereby ascribing a value of some sort to the lease. I cannot agree that a lease which grants to an individual the right to explore and mine a particular property is of no value.

I agree with the position taken by the Ministry and find that the name and address information contained in Record 4 is subject to the presumption in section 21(3)(f) as it describes an individual's assets. A lease must be considered as an asset, regardless of the fact that many of them will not ultimately result in mining activity which gives rise to a profit. The appellant has not raised the application of section 21(4) to the information in Record 4 but has made extensive representations on the application of section 23 to it. I will address this aspect of the appeal below.

In conclusion, I find that the information with respect to the names and addresses of individual leaseholders contained in Record 4 is subject to the presumption in section 21(3)(f) and that it qualifies for exemption under section 49(b).

PUBLIC INTEREST IN DISCLOSURE

It has been established in a number of previous orders that, for section 23 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and*

Privacy Commissioner) (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)].

In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices (Order P-984).

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply, in this case, section 49(b). Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption (Order P-1398).

The appellant has provided extensive submissions regarding the public interest that he argues exists in the disclosure of the information contained in the records. He indicates that he is attempting to initiate a class action lawsuit against the Ministry on behalf of mining leaseholders who are subject to a number of fundamental changes to the mining regime in Ontario. The appellant submits that:

there is a compelling public interest in releasing the requested data to us because the Ministry has made changes to the [Mining] Act which, unless corrected, will kill the future for mining in Ontario. This case is not restricted to a "certain segment" of the mining business. This case is about the entire Mining Industry because without exploration there will be no more new mines and without new mines there will be no jobs for workers when the existing mines close.

...

this case is much more important than righting the wrong done to [the appellant] and the shareholders of [the appellant's company]. Someone has to fight back. We want to be able to show the court that these changes were not welcomed by the majority of the mining community. We want to show the court the size and amount of the ministry's attempted tax grab. We want to show how many prospectors and public companies have moved out of Ontario. We want the Ministry to face the issue of grandfathering/honouring their contracts with leaseholders. We want affordable and reliable mining land tenure enshrined in law rather than in policy that can be changed on a whim.

...

Win, lose or draw, we submit that our intended court case will benefit Ontario for it will, by the process, show the Ministry the benefits to be had from an honest examination of the facts.

The appellant suggests that the information sought is already a matter of public record as the lease agreements have been registered on title in the appropriate land registry office where the property is located. Performing title searches without having the appropriate information would render the exercise unduly expensive. The appellant submits that the Ministry's records, including the information in Record 4, is up-to-date and ought to be disclosed.

The Ministry has also made extensive representations on the application of section 23 in its reply submissions. It argues that:

While the appellant submits that the changes implemented by the Ministry negatively impact the entire mining industry, he has not presented any arguments to substantiate these claims beyond how the changes have impacted upon him personally. He has presented no other evidence with respect to other individuals, the industry or public at large except for a brief, second-hand, unsubstantiated impact statement regarding another prospector.

...

There is no compelling public interest at stake in this appeal, only the appellant's "private interest". The Ministry feels that in order for section 23 to apply, the appellant must establish a cloud of wrongdoing or impropriety on the part of the institution and that no such evidence is present in this case.

The Ministry also relies upon the reasoning contained in Order P-1439 in which a request was made to the Ontario Insurance Commission for access to records relating to complaints received by the Commission with respect to "vanishing premium" insurance policies purchased through a named individual. In that decision, Adjudicator Laurel Crolepy adopted the approach taken in Order P-1121 to find that in order to satisfy the requirements of section 23, there must be a **compelling** public interest in the disclosure of the records which **clearly** outweighs the **purpose** of the exemption. Adjudicator Crolepy went on to find:

despite the nature of the class action suit, that the appellant's interest in the information is essentially a private one, that is, to assist her in pursuing the action against the insurance company and the affected person. Accordingly, I find that there is no compelling public interest in the disclosure of the affected person's personal information, and section 23 of the *Act* is not applicable.

The Ministry submits that the facts of the present appeal are similar to those in Order P-1439 in that the appellant wishes to institute a class action lawsuit on behalf of himself and others who have been adversely affected by the Ministry's policies and that he seeks the assistance of the Ministry in providing him with a list of potential plaintiffs to such an action. However, the Ministry reiterates its position that the appellant's interest in the disclosure of the information in Record 4 is essentially a private one and is not sufficiently compelling so as to clearly outweigh the privacy protection purpose inherent in the section 49(b) exemption.

Based on the submissions of the appellant and the supporting material he has provided to me, I am satisfied that there exists a public interest in the disclosure of the information contained in Record 4. I am also satisfied that the public interest may reasonably be described as “compelling” in the circumstances. I must now determine whether the public interest clearly outweighs the purpose of the section 49(b) exemption which I have found applies to the information in Record 4.

Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. It is important to note that sections 21 and 49(b) are exemptions whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

Commenting generally on the personal privacy exemption under the Freedom of Information scheme, the drafters of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980, vols. 2 and 3* (Toronto: Queen’s Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations which would generally be regarded as particularly sensitive in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that “[a]s the personal information subject to the request becomes more sensitive in nature ... the effect of the proposed exemption is to tip the scale in favour of non-disclosure”. [Order MO-1254]

In my view, the appellant has not provided me with sufficient evidence to establish that the public interest which exists in the disclosure of the personal information in Record 4 is such as to clearly outweigh the purpose of the personal privacy exemption in section 49(b). I note that the information in question is subject to the presumption in section 21(3)(f) as it describes an “asset” of the leaseholders listed therein. In my view, I have not been provided with the kind of cogent evidence which would tip the balance in favour of the disclosure of this information. I find that the public interest which exists in this information does not clearly outweigh the purpose of the section 49(b) exemption in the present circumstances.

I find, therefore, that section 23 has no application to the information contained in Record 4 which I have found to be exempt under section 49(b).

ORDER:

I uphold the Ministry’s decision to deny access to the names and addresses of the individual leaseholders, other than that of the appellant, which are contained in Record 4.

I order the Ministry to disclose to the appellant copies of Records 2, 3, and 4, except those portions of Record 4 which contain other leaseholders’ names and addresses, by providing him with a copy by May 16, 2001 but not before May 10, 2001.

I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original Signed By: _____ April 6, 2001

Donald Hale

Adjudicator