

CITATION: Northstar Aerospace v. Ontario (Information and Privacy Commissioner),
2011 ONSC 2956
DIVISIONAL COURT FILE NO.: 126/09
DATE: 20110512

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
JENNINGS, FERRIER and ASTON JJ.

B E T W E E N:)
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)
NORTHSTAR AEROSPACE (CANADA)) *Douglas F. Harrison and Sarah Clarke,*
INC.) for the Applicant.
)
Applicant)
- and -)
)
)
ONTARIO (INFORMATION & PRIVACY) *David Goodis, for the Respondent,*
COMMISSIONER), ONTARIO) Information and Privacy Commissioner
(MINISTRY OF THE ENVIRONMENT))
and JOHN DOE, Requester) *David Sunday, for the Respondent,*
) John Doe, Requester.
Respondents)
)
)
) **Heard at Toronto:** May 12, 2011

ASTON J. (Orally)

[1] Northstar Aerospace applies for judicial review of Order PO-2763 dated February 26, 2009 of the Information and Privacy Commissioner which ordered disclosure of records containing homeowner's addresses or location information together with TCE test results.

[2] Before addressing the merits of the application, we asked counsel to address the following questions:

(i) Given the assurances of confidentiality under which the information was gathered and the subsequent sharing of that information with the Ministry of the Environment, also on a confidential basis, are the homeowners who may be affected by the release of this information entitled to an opportunity to participate in this process?

(ii) If so, should the decision of the Information and Privacy Commissioner be set aside and the matter remitted for a hearing on notice to the homeowners?

[3] After hearing submissions on these questions, we have concluded that:

(i) It is at least arguable that the address and test results, when combined, are "about" an individual and within the definition of "personal information". We note that the testing was done inside the homes and on an assurance of confidentiality.

(ii) Section 28 of the *Freedom of Information and Protection of Privacy Act*, may require notice to the homeowners in the unique circumstances of this case. But, even if strictly speaking it does not require notice, we are of the view that procedural fairness considerations include providing the homeowners with an opportunity to be heard.

[4] The decision of the Information and Privacy Commissioner is therefore set aside and the matter remitted for a hearing on notice to those homeowners whose properties are identified in the test results.

JENNINGS J.

[5] The application is allowed. The order of the I.P.C. is set aside, and the matter remitted for hearing on notice to the affected homeowners, pursuant to oral reasons delivered today. No costs being demanded, none awarded.

ASTON J.
JENNINGS J.
FERRIER J.

Date of Reasons for Judgment: May 12, 2011

Date of Release: May 17, 2011

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SUPERIOR COURT OF JUSTICE
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B E T W E E N:

NORTHSTAR AEROSPACE (CANADA) INC.

Applicant

- and -

ONTARIO (INFORMATION & PRIVACY
COMMISSIONER), ONTARIO (MINISTRY OF
THE ENVIRONMENT) and JOHN DOE, Requester

Respondents

ORAL REASONS FOR JUDGMENT

ASTON J.

Date of Reasons for Judgment: May 12, 2011
Date of Release: May 17, 2011