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

ORDER P-1168

Appeal P-9500482

Ministry of Municipal Affairs and Housing

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Municipal Affairs and Housing (the Ministry) pursuant to the Freedom of Information and Protection of Privacy Act (the Act). The request was set out in three parts, all of which related to investigations conducted by the Ministry concerning the building in which the appellant lives.

The Ministry located the responsive records and provided some of them to the appellant. The Ministry denied access to the balance of the records on the basis of the following exemptions in the Act:

- law enforcement - sections 14(1)(a), (b) and (d)
- invasion of privacy - section 21(1)
- discretion to refuse requester's own information - section 49(a)

The appellant filed an appeal of the Ministry's decision. During mediation, the appellant indicated that he was only appealing the Ministry's decision in response to part three of his request. In addition, he limited the scope of the information in these records.

This office sent a Notice of Inquiry to the Ministry and the appellant. The Ministry subsequently sent the appellant those records containing only his personal information, thereby removing section 49(a) of the Act from the scope of this appeal. Representations on the remaining issues and records were received from both the Ministry and the appellant.

The records now at issue may be divided into three groups and described as follows:

(1) Pages 46-57: These pages constitute the April 1995 Rent Roll for the building in which the appellant resides. The appellant is not seeking access to the names of the tenants.

(2) Pages 58-66, 91-108, and 124-166: These documents include letters written by a lawyer to a representative of the landlord concerning various situations involving her clients who are tenants in the building. They also contain information provided by the tenants to the lawyer, such as copies of notices of rent increases and correspondence they received from the landlord, as well as correspondence the tenants had sent to the landlord. The appellant is not seeking access to the personal information of any of the individuals in this documentation.

(3) Pages 167-429: These pages are copies of rent surveys completed by some of the tenants in the building and returned to the Ministry. The appellant is only seeking access to the apartment numbers of those tenants who returned the surveys. Attached to most of the surveys is a computerized printout of the maximum rent for the units in the building. The Ministry states that it regularly discloses this information and that the appellant should advise if he is interested in obtaining access to these figures.

The Ministry claims that each of the exemptions applies to each of the records.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to financial transactions in which the individual has been involved and 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.

I have reviewed the records to determine if they contain personal information.

The Rent Roll (pages 46-57) contains a listing of the apartment numbers, tenants' names, and the dollar amounts for the last month's rent, the April unit rent, parking charges, total rent and the difference between the last month's rent and the April total for each apartment. In my view, information concerning the amount of rent and other charges is personal information. Even with the removal of the tenants' names, the dollar figures are linked to an apartment number. It is a relatively simple matter for anyone to use these apartment numbers to identify the unit occupants. This is especially true for an individual such as the appellant who is another tenant in the building.

In Order P-230, Commissioner Tom Wright stated:

> I believe that provisions of the Act relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

Applying this reasoning to the Rent Roll, I find that there is a reasonable expectation that the tenants can be identified from their unit numbers. Accordingly, even if the names of the tenants are removed, the information contained in this record constitutes their personal information.

The same analysis applies to group three of the records, the rent surveys (pages 167-429). If the appellant were provided with only the unit numbers of those individuals who returned the surveys, the tenants themselves could be identified. The Ministry submits, and I agree, that the mere fact that a tenant provided a completed form to the Ministry constitutes the personal information of the individual.

The Ministry characterizes such information as "correspondence sent to the Ministry that is implicitly or explicitly of a private or confidential nature". This definition of personal information is found in section 2(1)(f) of the Act. The Ministry states that the Enforcement Unit has a very clear policy in respect of such information. It indicates that the information is treated as confidential unless the person expressly consents to the release or unless a prosecution is commenced. Neither of these circumstances exist in the present case. On the basis of the foregoing information, I find that those tenants who completed the surveys held a reasonable expectation that neither their identity nor the information contained in the survey would be disclosed. Accordingly, I find that the apartment numbers of those tenants who returned the surveys constitutes the personal information of these individuals.

The group two records (pages 58-66, 91-108, and 124-166) indicate that certain tenants sought the assistance of counsel at a legal clinic. These records contain the name and unit numbers of these individuals as well as very detailed information concerning their payments to the landlord over several years as well as their interactions with the landlord.

The appellant states that he is not seeking access to the personal information of any individuals contained in these records. In my view, this would exclude the names, unit numbers, dates, rents, services and any other information which would serve to identify the tenants. This information is so intertwined with the other information in the records that I find that these documents, as a whole, constitute the personal information of identifiable individuals.

None of the records at issue contain the personal information of the appellant.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 to the personal information found in a record, 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 to the personal information.

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

The Ministry submits that the personal information is subject to the presumption in section 21(3)(b) of the Act, which states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The Ministry states that the records at issue were compiled as part of an investigation by its Enforcement Unit which is part of the Rent Registry within the Rent Control Programs Branch. The Ministry explains that the mandate of the Unit is to enforce the provisions of the Rent Control Act (the RCA) and the Rental Housing Protection Act.

The statutory authority for investigations conducted by the Unit is found in the RCA. Section 134 of this legislation provides for twelve offences which can be prosecuted by laying charges according to the procedure set out in the Provincial Offences Act.

The Ministry submits that investigations undertaken by the Enforcement Unit are complaint driven. In the present case, the Ministry received a complaint and then undertook an investigation to determine if the investigator had reasonable and probable grounds to believe that offences as defined under the RCA had been committed. On the basis of the explanation of the function and mandate of the Enforcement Unit, I find that the investigation which was conducted was one into a possible violation of law, namely the RCA.

As part of the investigation, the investigator met with a representative of the landlord who provided him with access to the Rent Roll, pages 46-57 of the records. In addition, the investigator arranged for the rent surveys (pages 167-429) to be sent to all the tenants in order to identify possible rent discrepancies and other alleged offences. I find that all of these pages were compiled by the investigator as part of his investigation.

Page 58 of the records indicates that the attached materials (pages 59-66, 91-108, and 124-166) were collected by the investigator from a legal clinic. In Order P-666, former Assistant Commissioner Irwin Glasberg had occasion to consider whether personal information which was originally obtained for a non-law enforcement purpose, could be said to have been **compiled** as part of an investigation into a possible violation of law under section 21(3)(b). In Order P-666, as is the case in this appeal, the personal information subsequently found its way into a Ministry law enforcement file.

Former Assistant Commissioner Glasberg concluded:

> To summarize, based on the dictionary definitions for the word "compile" and the interpretation placed on this term in the John Doe Agency case, the ordinary meaning of compile for the purposes of section 21(3)(b) of the Act is to collect, gather or assemble together. Stating the matter differently, to compile does not mean to create at first instance.
>
> The result of this interpretation is that, for personal information to be compiled and identifiable as part of an investigation into a possible violation of law under section 21(3)(b), it is not necessary for this information to have been originally created or prepared for that specific investigation. Rather, the section 21(3)(b) presumption will apply as long as the personal information was, at some point in time, assembled or gathered together as part of this investigation.

I adopt this interpretation for the purposes of the present appeal. In this case, it is clear that although the documentation from the legal clinic was originally created for other purposes, it was collected by the Ministry investigator as part of his investigation into the alleged RCA offences. Accordingly, I find that pages 58-66, 91-108 and 124-166 are also subject to the presumption in section 21(3)(b) of the Act.

In summary, I find that all of the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. The fact that no criminal proceedings were commenced does not negate the applicability of section 21(3)(b) (Order P-237).
As I have previously indicated, where one of the presumptions in section 21(3) applies, it can only be rebutted if section 21(4) or 23 applies. This result is dictated by the findings of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767.

I have considered the application of section 21(4) of the Act and find that none of the personal information that I have found to be subject to the presumption falls within the ambit of this provision. The appellant has not raised the application of section 23 of the Act. Therefore, the disclosure of the personal information contained in the records would result in an unjustified invasion of the personal privacy of these individuals and the mandatory exemption in section 21(1) of the Act applies.

Because of the manner in which I have dealt with the application of section 21(1), I need not consider the application of sections 14(1)(a), (b) and (d) of the Act.

ORDER:

1. I uphold the decision of the Ministry.

2. Should the appellant wish to obtain access to the maximum allowable rents of the building, I order him to so advise the Ministry no later than **April 29, 1996**.

3. In the event that the appellant contacts the Ministry pursuant to Provision 2, I order the Ministry to provide the information to the appellant within twenty (20) days of the date of the contact.

4. In the event that the appellant does not contact the Ministry pursuant to Provision 2, this matter will be deemed to have been abandoned by the appellant. This does not, however, preclude him from submitting another access request to the Ministry with respect to this information.

Original signed by: April 18, 1996
Anita Fineberg
Inquiry Officer