



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

ORDER PO-1856

Appeal PA-990328-2

Alcohol and Gaming Commission



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NATURE OF THE APPEAL:

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to a copy of all records containing information about complaints made to the Alcohol and Gaming Commission (the "AGCO"), or its predecessor, the Liquor Licence Board of Ontario (the "LCBO"), respecting a group of companies.

The AGCO identified 8 responsive records and granted partial access to Records 1 - 5 (printouts from the AGCO inspection system). The AGCO denied access to portions of the complaint memorandum (Record 6) based on the exemption in section 21(1) (invasion of privacy), and denied access to the statements of two police officers (Records 7 and 8) in their entirety, under section 14(2)(a) of the *Act* (law enforcement report).

The requester (now the appellant) appealed the AGCO's decision relying on the exceptions to the prohibition against the disclosure of personal information in section 21(1) of the *Act*, which are set forth in sections 21(1)(c) (public record) and (f) (not an unjustified invasion of personal privacy).

A Notice of Inquiry, summarizing the facts and issues in the appeal, was sent initially to the AGCO and to the last known business addresses of two individuals whose interests may be affected by the disclosure of the information contained in the records (the affected persons). Despite the efforts of this office, no response was received from the affected parties. The AGCO submitted representations which have, with the exception of a portion withheld for confidentiality reasons, been shared with the appellant. The appellant did not submit representations in response to the Notice provided to her.

RECORDS:

Three records are at issue in this appeal and all are related to the same investigation. They are:

1. The undisclosed information in Record 6, which is a memorandum regarding a complaint involving the appellant; and
2. Records 7 and 8, which are two police officers' statements.

DISCUSSION:

PERSONAL INFORMATION

The section 21(1) personal privacy exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. The affected persons, the appellant and the AGCO were requested to identify whether the information at issue in these records qualifies as personal information under section 2(1) of the *Act*. In addition, the parties were asked whether there are circumstances in which information that is written by, provided by or is associated with the name of an individual in his or her

professional capacity, would be considered to be that person's "personal information" within the meaning of section 2(1).

The submissions of the AGCO state in general that the records contain information about identifiable individuals in accordance with section 2(1) of the *Act*.

The AGCO submits that the information severed from Record 6 identifies individuals who supplied the LCBO with information that caused an investigation to be commenced against a company. It also submits that the information is properly characterized as "personal information" as it includes the individuals' names, their position titles, and cites their employer and business address. Records 7 and 8 also contain information about the police officers' employer, how the officers came to be involved in the investigation, and their actions and observations.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional capacity, and found in some circumstances, information associated with a person in his or her professional capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621]. In past decisions on this subject, this office has taken the approach that information which identifies an individual in his or her employment, professional or official capacity, or provides a business address or telephone number, is usually not regarded as personal information.

In Reconsideration Order R-980015, Adjudicator Donald Hale reviewed the history of the Commissioner's approach to this issue and the rationale for taking such an approach. He also extensively examined the approaches taken by other jurisdictions and considered the effect of the decision of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 on the approach which this office has taken to the definition of personal information. At page 4, Adjudicator Hale stated:

The distinction between personal information and other information associated with an identifiable individual has also been considered by the Commissioner in the context of information relating to an individual's professional, employment or official government capacity in both public and private sector settings. The Commissioner's orders have established that, as a general rule, a record containing information generated by or otherwise associated with an individual in the normal course of performing his or her professional or employment responsibilities, whether in a public or a private sector setting, is not the individual's personal information simply because his or her name appears on the document.

In applying the principles which he described in that order, Adjudicator Hale concluded:

I find that the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the

correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not about these individuals and, therefore, does not qualify as their “personal information” within the meaning of the opening words of the definition.

I find that the information severed from Record 6, and the information contained in Records 7 and 8, does not qualify as “personal information” because the information was provided by the individuals who are named therein in their employment, rather than their personal, capacity. Having found that these records do not contain personal information, the AGCO cannot rely on the exemptions in section 21(1).

Because I have found that section 21(1) does not apply to the undisclosed portions of Record 6, and no other mandatory exemptions apply to this information, I will order that it be disclosed to the appellant.

I now turn to a discussion of the application of the section 14 (2)(a) exemption to Records 7 and 8.

LAW ENFORCEMENT:

Records 7 and 8 (police officer’s statements)

The AGCO submits that Records 7 and 8 are part of a report that was prepared in the course of a law enforcement investigation and, therefore, they qualify for exemption under section 14(2)(a) of the *Act*. This section reads:

A head may refuse to disclose a record,

(a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under section 14(2)(a), the AGCO must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law [Orders 200 and P-324].

With respect to parts 2 and 3, previous decisions have established that records similar to the ones at issue were prepared in the course of law enforcement investigations, by an agency which has the function of enforcing and regulating compliance with a law, the LCBO [Order P-1297].

After reviewing the records and the AGCO's submissions, however, I am not satisfied that they meet the definition of "report". While the word "report" is not defined in the *Act*, previous orders have established that a "report" must consist of a formal statement or account of the results of the collation and consideration of information [Order P-200]. Generally speaking, results would not include mere observations or recordings of fact [Order M-1048].

I find that Records 7 and 8 consist of observations and recordings of fact made by the officers during the course of the investigation. As such, they do not qualify as reports for the purpose of the first part of the above test.

I therefore conclude that Records 7 and 8 do not fall under the exemption contained in section 14(2)(a) and that they are to be disclosed to the appellant.

ORDER:

3. I order the AGCO to disclose Records 6, 7 and 8 in their entirety.
2. In order to verify compliance with this order, I reserve the right to require the AGCO to provide me with a copy of the records disclosed to the appellant.
3. I order disclosure to be made by sending the appellant a copy of the records by February 15, 2001, but not before February 9, 2001.

Original Signed By: _____ January 12, 2001

Dora Nipp
Adjudicator