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

ORDER PO-2065

Appeal PA-010307-1

Ontario Food Terminal Board

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NATURE OF THE APPEAL:

This appeal concerns a decision of the Ontario Food Terminal Board (the Board) made pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to information relating to the farmers' market, a wholesale fruit and produce distribution center owned and operated by the Board. In particular, the appellant sought access to the following:

1. an up-to-date list of the leaseholders, [their stall number(s), whether they are a grower or a dealer, and the period of their leasehold];

2. [a list of the] Board members and [their] position [on the Board] for the years 1999 [and] 2000;

3. [a] list of the 125 farmers [who want] to relocate to a better stall;

4. the date the Farmers Market Questionnaire (Bulletin 1242) was mailed;

5. the specific circumstances where a stall or stalls are issued that supercede the conditions provided for in section 7 of the Farmers Market Lease, [. . . .]; the objectives of the Farmers Market;

6. the minutes of the meeting where it was determined to withhold [the appellant's] lease of stalls 312 and 313 for the upcoming year.

The Board granted access to the information responsive to parts 2 and 4, and to one record responsive to part 5. It identified one record responsive to part 1 and one record responsive to part 3 (I note that while the parties have referred to the record responsive to part 3 as a list of 125 farmers, there are in fact 133). It denied access to the records responsive to parts 1 and 3, relying on section 17 (third party information), section 20 (danger to safety or health) and section 21 (invasion of privacy) of the *Act*, and denied access to the records responsive to part 6, relying on the exemptions in sections 13 (advice or recommendations), 17, 18 (valuable government information) and 21.

The appellant appealed the Board's decision regarding parts 1, 3 and 6 of his request.

During the mediation stage of this appeal, the Board agreed to grant access to the record responsive to part 6 of the request and, as a result, this part is no longer at issue. Also during mediation, the Board agreed to grant partial access to the record responsive to part 1 of the request, but maintained that the rest of this record, as well as the entire record responsive to part 3 of the request, were exempt.

I, initially, sent a copy of a Notice of Inquiry, which outlined the facts and issues in this appeal, to the Board and I received representations in response. The non-confidential portions of the Board's representations were shared with the appellant, along with the Notice, and the appellant submitted representations in response. I then sought representations from the named affected parties, the individual and business leaseholders. The affected parties were provided with the Notice and the non-confidential representations of the Board and the appellant. I received

representations from one affected party, which objects to the release of any information relating to it on the basis that the information was given to the Board on the belief that it would be kept confidential. This affected party does not mention specifically any sections of the *Act* that it is relying upon in support of its position or provide any further elaboration of its position.

RECORDS:

There are two records at issue responsive to parts 1 and 3 of the appellant's request respectively:

Record #	Description	Severed or Withheld in Full	Exemption Claim
1	Farmers' Market Leaseholders List (10 pages)	Severed	Sections 20, 21
2	Request for Stall Change List (4 pages)	Withheld in full	Sections 17, 20, 21

DISCUSSION:

INVASION OF PRIVACY

Personal Information

Introduction

The section 21 exemption can apply only to "personal information". Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual [paragraph (c)] 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 [paragraph (h)].

Representations

The Board submits that both records "contain the name, stall number, and other information relating to a number of identifiable individuals."

The appellant submits the following representations:

> Leaseholders distribute business cards to regular and potential customers of the [farmers' market]. Their name, address, telephone number(s)[,] [f]ax[…] number an[d] in some cases the stall number is indicated. This is a normal business practice.

> Leaseholders issue invoices, sales receipts and statements to customers of the [farmers' market]. This is normal business procedures.
>
> Leaseholders are using the stall(s) for the opportunity to sell their produce on the [farmer's market] in an open market environment. Business is conducted in a professional capacity AT ARMS LENGTH to their residence, farm or their production facilities.

Findings

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government 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 Order PO-1893, a case involving somewhat similar information, Adjudicator Donald Hale considered whether the names, addresses and other information about individuals and businesses holding mining leases constituted "personal information". Adjudicator Hale began by discussing previous decisions that touch on this issue:

> 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.

Adjudicator Hale then reviewed the parties' representations, and applied the above principles as follows:

> [T]he 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).
>
> . . . . . .
>
> 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 [corporations] 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 . . .

I agree with Adjudicator Hale's interpretation and application of the definition of "personal information", and find them to be largely applicable here.

The withheld portions of the Farmers' Market Leaseholders List (Record 1) contain information about "natural persons" within the meaning of paragraphs (c) and (h) of the definition of "personal information". This information consists of the names of individual leaseholders along with their respective stall numbers in the farmers' market, the seasonal term of their leases and the leaseholders' classification (*i.e.*, grower, Ontario dealer, Canadian dealer). Disclosure of the names, seasonal terms and classification would reveal detailed information about the leases held by these individuals. This information falls under paragraph (h) of the definition. In addition, the stall numbers would allow a person to identify the individual leaseholders, and thus qualifies as "an identifying number . . . assigned to the individual under paragraph (c) of the definition.

The Request for Stall Change List (Record 2) also contains personal information within the meaning of paragraphs (c) and (h) of the definition. This information consists of individual leaseholders' names, stall number(s), date of the application for stall change, seasonal term requested, stall number(s) requested and, in some cases, miscellaneous notes about the request. Taken together, this information is "about" the individual leaseholders and falls within

paragraphs (c) and (h) of the section 2(1) definition. However, I also find that other portions of Record 2 contain information that relates to business leaseholders, and not to natural persons, and I am satisfied that this information does not qualify as personal information within the meaning of the definition.

Taken as a whole, the information relating to individual leaseholders constitutes "personal information". However, if the personal identifiers (names and stall numbers) are removed from the records, the remaining information is not about "identifiable individuals". Therefore, only the names and stall numbers qualify as "personal information".

Application of the Section 21 Exemption

Introduction

I have determined that the names and stall numbers in Records 1 and 2 constitute the personal information of affected persons. Where records contain only the personal information of individuals other than an appellant, section 21 of the *Act* prohibits disclosure of this information unless one of the exceptions listed in the section applies. The onus is on the appellant to establish the application of one or more of these exceptions.

The appellant submits that in a previous year the contents of Record 1 were included and released with the Board's annual report. While the appellant does not expressly say so, in making this statement, he appears to be arguing that the exception under section 21(1)(c) is applicable in the circumstances of this appeal. The Board relies on the presumption in section 21(3)(f) to deny access to this information.

Section 21(1)(c): Record Available to the General Public

Section 21(1)(c) is an exception to the mandatory personal privacy exemption. It reads as follows:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > personal information collected and maintained specifically for the purpose of creating a record available to the general public;

Previous orders of this office have stated that in order to satisfy the requirements of section 21(1)(c), the information must have been collected and maintained specifically for the purpose of creating a record available to the general public (see for example, Order P-318). Section 21(1)(c) has been found to be applicable where, for example, a person files a form with an institution as required by a statute, and where that statute provides any member of the public with an express right of access to the form (for example, Order P-318, regarding a Form 1 under the *Corporations Information Act*). On the other hand, this office has found that where information in a record may be available to the public from a source other than the institution

receiving the request, and the requested information is not maintained specifically for the purpose of creating a record available to the general public, section 21(1)(c) does not apply.

Turning to the present appeal, while it may be the case that the Board has, in the past, made this information available through its annual report, I am not satisfied that the information at issue is being maintained by the Board specifically for the purpose of creating a record that is to be made available to the general public. Based on the evidence before me, it appears that these records were created and are being maintained for the Board's internal administrative purposes in dealing with current leaseholders of the farmers' market, and not for the purpose of publication. There is no evidence before me to indicate that any prior publication of this information was done pursuant to a statute or regulation, or that it would have been more than merely incidental to the main, administrative purpose for which the information was collected and maintained. Accordingly, section 21(1)(c) is not applicable here.

Section 21(1)(f): Disclosure That Does Not Constitute an Unjustified Invasion of Privacy

As outlined above, section 21(1) of the *Act* prohibits the disclosure of personal information, unless one of the exceptions listed in that section is applicable. In this appeal, the only other exception which could apply is section 21(1)(f), which permits disclosure if it "...does not constitute an unjustified invasion of personal privacy". Sections 21(2) and (3) 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 head 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. The Divisional Court has stated that once a presumption against disclosure under section 21(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2) [see *John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767)]. A section 21(3) presumption can be overcome only 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 in disclosing the personal information in the record clearly outweighs the purpose of the section 21 exemption.

The appellant makes no specific submissions on the application of the factors in section 21(2).

I have reviewed all of the factors in section 21(2) that favour disclosure of the personal information as well as any unlisted factors, and find that none apply in the circumstances. Accordingly, I find that disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy, and is therefore properly exempt under section 21.

In the circumstances, I do not need to consider the Board's submissions on the application of the presumption at section 21(3)(f) of the *Act*.

THIRD PARTY INFORMATION

The Board claims that the information in Record 2 is exempt under section 17(1) of the *Act*. Since I found above that the personal information about individual leaseholders is exempt under section 21, the only information remaining at issue is the information about business leaseholders. Section 17(1) states, in part:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

[Section 17(1)(d), which relates to certain information in the employment and labour relations context, clearly does not apply here.]

For a record to qualify for exemption under sections 17(1)(a), (b) or (c) the Board and/or the affected parties must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) of section 17(1) will occur [Orders 36, P-373, M-29 and M-37].

Part 1 – Type of Information

The Board submits that Record 2 contains commercial information and provides the following representations:

> "Commercial information" means: information concerning the buying, selling or exchange of goods, products or services (Order 47); information relating to the commercial operation of a business (Order 16); the names of customers and information relating to the materials in which a company deals and its markets (Order P-703); a description of work done or services rendered; or a description of services to be provided (Orders P-493 and M-192); and, information relating to contractual agreements, negotiations and correspondence between two parties concerning a commercial transaction or arrangement (Order P-385).
>
> . . . . .
>
> [Record 2] constitutes "commercial information" as a whole in that it deals with the leasing of stalls from the [Board]; and contains the names of the [Board]'s leaseholders (customers), and information relating to negotiations between the parties concerning a requested and/or anticipated commercial transaction or arrangement.

The information remaining at issue in Record 2 contains information relating to the business leaseholders at the farmers' market including leaseholders' names, stall number(s), requested stall number(s), date of the application for stall change, seasonal term requested and, in some cases, miscellaneous notes about the requests.

I agree with the Board's characterization of "commercial information". The information at issue can be described as information concerning the buying or selling of goods or products and, therefore, this information qualifies as commercial information for the purpose of section 17(1) of the *Act*. Accordingly, I find that part 1 of the test has been met.

Part 2 – Supplied in Confidence

Introduction

In order to satisfy part 2 of the test, the affected parties and/or the Board must show that the information was *supplied* to the Board *in confidence*, either implicitly or explicitly.

The requirement that it be shown that the information was "supplied" to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties. As stated in *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report), which provided the foundation of this *Act*:

> . . . [T]he [proposed] exemption is restricted to information "obtained from a person" in accord with the provisions of the U.S. act and the Australian Minority Report Bill, so as to indicate clearly that *the exemption is designed to protect the informational assets of non-governmental parties rather than information relating*

> *to commercial matters generated by government itself*. The fact that the commercial information derives from a non-governmental source is a clear and objective standard signaling that consideration should be given to the value accorded to the information by the supplier. Information from an outside source may, of course, be recorded in a document prepared by a governmental institution. It is the original source of the information that is the critical consideration: thus, a document entirely written by a public servant would be exempt to the extent that it contained information of the requisite kind.
> (pp. 312-315) [emphasis added]

To meet part 2 of the test, it must first be established that the information in the record was actually "supplied" to the Board, or that its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Board (Orders P-203, P-388 and P-393).

With respect to whether the information was supplied "in confidence", part 2 of the test for exemption under section 17(1) also requires the demonstration of a reasonable expectation of confidentiality on the part of the supplier at the time the information was provided. It is not sufficient that the business organization had an expectation of confidentiality with respect to the information supplied to the institution. Such an expectation must have been reasonable, and must have an objective basis. The expectation of confidentiality may have arisen implicitly or explicitly (Order M-169).

In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

(1) Communicated to the institution on the basis that it was confidential and that it was to be kept confidential.

(2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization.

(3) Not otherwise disclosed or available from sources to which the public has access.

(4) Prepared for a purpose which would not entail disclosure.

(Order P-561)

Representations

The Board submits:

> A tenant requesting a stall change must fill out an application for Request for Stall Change and provide to the [Board] certain information relating to the change, including indicating to which stall(s) they wish to relocate. All of the information contained within [Record 2] is "supplied" to the [Board] by the tenants through this process.
>
> . . . . .
>
> The Farmers Market tenants are in competition with each other and with persons outside the [Board] selling on a wholesale basis. In requesting a stall change, a tenant advises the [Board] of their intended area (that is, where they would like to move to), the size of the stall they require and the length of term they need.
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> . . . . .
>
> Tenants of the [Board] have a reasonable expectation of confidentiality in terms of the information they provide to the [Board], especially as it relates to a stall change request. Tenants provide the required information believing that the [Board] will not generally disclose that information to their competitors as competition is fierce in this industry and profit margins are very low.
>
> . . . . .
>
> [Record 2], and the information it contains, is not available to the public and is generally treated in a confidential manner by the [Board], in recognition of the sensitive nature of the information itself and the concerns of its tenants.

The affected party makes the following submission:

> Such information was given to the Board on the belief that the information would be treated as confidential and would not be released to any tenant or potential tenant of the farmer's market or to any other person or organization unless the release of such information was authorized in advance by [us].

The appellant did not provide any representations that were relevant to the consideration of part 2 of the test.

Findings

I am satisfied on the evidence before me that the business leaseholders' names, desired stall locations, desired seasonal term, application date and miscellaneous notes were "supplied" within the meaning of section 17(1) of the *Act*. However, I am not convinced that the current stall locations were supplied within the meaning of section 17(1). In my view, this latter information was known by the Board before it accepted applications for stall changes and, therefore, it should not be seen as having been supplied by the business leaseholders to the

Board. Accordingly, I find that all of the information at issue in Record 2, except for the current stall locations, was supplied within the meaning of section 17(1).

With respect to the "in confidence" portion of the part 2 test, there is no evidence before me of an explicit expectation of confidentiality on the part of either the suppliers of the information or the Board. Further, I am not persuaded, based on the material before me, that there was a reasonable expectation on the part of either the suppliers or the Board that the request for stall change information was supplied with an implicit expectation of confidentiality. The affected party has provided me with little more than general assertions, and the Board's representations, although more extensive, are not sufficiently detailed and reasoned to permit me to infer the required expectation of confidentiality.

Part 3 - Harms

Introduction

Although it is not necessary for me to do so, I will consider whether the part 3 "harms" test has been met for the information at issue in Record 2.

To discharge the burden of proof under part 3 of the test, the parties opposing disclosure must present evidence that is detailed and convincing, and must describe a set of facts and circumstances that could lead to a reasonable expectation that one or more of the harms described in section 17(1) would occur if the information was disclosed (Order P-373).

The words "could reasonably be expected to" appear in the preamble of section 17(1), as well as in several other exemptions under the *Act* dealing with a wide variety of anticipated "harms". In the case of most of these exemptions, in order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide "detailed and convincing" evidence to establish a "reasonable expectation of probable harm" [see Order P-373, two court decisions on judicial review of that order *in Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

Representations

The Board submits:

> Harm to the tenants listed in [Record 2] can reasonably be expected should that record be disclosed. The potential harm includes prejudice to the tenants' competitive position; interference with the tenants' ability to negotiate, contractually or otherwise; and any resultant undue loss to the tenants and/or undue gain to the tenants' competitors,….

. . . . .

> Knowledge of [stall change request] information would definitely give a competitor a commercial advantage against that tenant since the competitor would then gain the ability to determine the approximate amount of produce the tenant is planning to produce, the type of product they are planning to grow, the time of year they will be able to produce the product, if the tenant is intending to change the product they are currently producing, and the amount of supply that would be available at a given time.
>
> . . . . .
>
> It is noted that information which may appear to be rather innocuous on its face can actually become of significant competitive value in the hands of a competitor. As the old adage goes "knowledge is power", and even a little knowledge can prove formidable in certain contexts.

The appellant makes the following representations in response:

> The farmer is a tenant of the [farmers' market]. Their production is known by the surrounding farmers as all one must do is to look at the size of the truck, walk to the tenants stall and count the number of skids of produce that is being placed on the stall, […]
>
> There will be no significant […] harm if one particular farmer moves from [one stall to another]. This is the penalty for conducting business in such a confined area surrounded by as many as four hundred or so of your peers as they ALL feel it necessary to know each others business.

The affected party makes no specific submissions on this issue.

Findings

Whereas the Board has advanced general arguments as to how disclosure of Record 2 might be harmful to a tenant's competitive interest, the Board has failed to bridge the evidentiary gap necessary to establish that disclosure of Record 2, in these circumstances, could reasonably be expected to cause the type of harm set out in section 17(1). The Board and the affected party have failed to provide detailed and convincing evidence of how disclosure of the contents of Record 2 could reasonably be expected to result in the impacts suggested in the Board's representations. Of the large number of business leaseholders that were notified, only one responded and this affected party did not provide detailed and convincing evidence of a reasonable expectation of probable harm should Record 2 be disclosed. The evidence before me consists of generalized assertions of fact in support of what amounts to, at most, speculations of possible harm.

I find that part 3 of the section 17(1) exemption test has not been established with respect to Record 2. Therefore, none of the information in Record 2 qualifies for exemption under section 17(1) of the *Act*.

DANGER TO SAFETY OR HEALTH

The Board has not submitted any representations in support of its reliance on the section 20 exemption to withhold Records 1 and 2. In addition, there is nothing in the circumstances, either on the face of the records or otherwise, to suggest that the release of any of the information at issue could reasonably be expected to seriously threaten the safety or health of any individual. Accordingly, I find that section 20 does not apply to either record.

SEVERANCE

In light of my finding above that personal information is restricted to the names and stall numbers of individual leaseholders, I find that the Board has incorrectly severed Record 1. Specifically, the Board should not have withheld the seasonal term and classification information from this record.

I have also found some additional errors in the Board's severance of Record 1. There are two occasions where the Board has disclosed, in error, the personal information of affected persons (page 2, line 48; page 5, line 42). As this information has already been disclosed to the appellant, the only remedy I can reasonably provide in the circumstances is to require the Board to withhold this personal information when it re-discloses Record 1 in accordance with this order. There are also nine occasions where the Board, in error, categorized information relating to business leaseholders as personal information and incorrectly withheld it (page 3, lines 49 and 50; page 4, line 45; page 6 lines 35, 43 and 45; page 8, lines 10 and 43; and, page 10, line 32). I will order the Board to disclose this information.

With respect to Record 2, as stated above, I have found the names and stall numbers for individual leaseholders to be their personal information. Therefore, this information should be withheld, and information relating to the date of application, stall requested, seasonal term requested and miscellaneous notes should be disclosed to the appellant. As I have found that the information pertaining to business leaseholders is not exempt, all of this information should be disclosed to the appellant.

ORDER:

1. I do not uphold the Board's decision to withhold portions of Record 1, and all of Record 2.

2. I order the Board to disclose Records 1 and 2 to the appellant no later than **December 13, 2002,** but not earlier than **December 6, 2002**, in accordance with the highlighted versions of these records included with the Board's copy of this order. To be clear, the Board should not disclose the highlighted portions of the records.

3. In order to verify compliance with terms of provision 2, I reserve the right to require the Board to provide me with a copy of the material it discloses to the appellant.

Original signed by: November 8, 2002
Bernard Morrow
Adjudicator