



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2649

Appeal PA07-53

Ministry of Tourism



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Tourism (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for the identity of the requester who had submitted a specified request for access to information under the *Act* to the Ministry.

The Ministry notified the earlier requester of the current request for his identity. The Ministry identified the earlier written request letter as the responsive record, noting that it contains the earlier requester's name, title and the name of his business. The Ministry later issued a decision, indicating it would be disclosing this request letter to the party requesting the information.

The earlier requester objected to the Ministry's decision to disclose the requested information and appealed the Ministry's decision. The earlier requester, now the appellant, objected to the release of the identifying information from his request letter, citing the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy) of the *Act*.

As mediation did not resolve this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the appellant, initially. The appellant responded with representations. I then provided the requester in this appeal with a complete copy of the appellant's representations (less any identifying information), along with a Notice of Inquiry, and sought the requester's representations. The requester did not provide representations in response. I also sent a copy of the appellant's representations to the Ministry, along with a Notice of Inquiry, seeking its representations. I received representations from the Ministry in response.

RECORDS:

The information at issue consists of the appellant's name, his title and the name of his business as contained in his request letter.

DISCUSSION:

Identity of the Requester

In objecting to the release of the information in the record identifying his name, title and name of his business, the appellant relies on *Practices Number 16: Maintaining the Confidentiality of Requesters and Privacy Complainant*. In addition, he submits that:

[T]he *Act* itself is not predicated on a requester being identified and nothing appears to allow for it in the legislation.

If the current information requested is released how many other individuals who are seeking information may be dissuaded from doing so as they wish to maintain their confidentiality.

In order to determine whether the record is exempt under the mandatory exemption in section 21(1), I must first determine whether the record contains "personal information" as defined in section 2(1) and, if so, to whom does it relate. That term is defined in section 2(1), as follows:

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) 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,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry submits that:

[It] was quite aware of IPC [Information and Privacy Commissioner/Ontario] *Practices 16: Maintaining the Confidentiality of Requesters and Privacy Complainants* (re-issued September 1998) regarding the practices surrounding a Freedom of Information and Privacy Co-coordinator and staff not identifying requesters to Ministry employees outside the Coordinator's office when processing access requests for records. Similarly, the Ministry was aware of and considered Order PO-1998 which addressed the concern of a requester that his identity was disclosed to Ministry of the Environment employees outside of the Co-ordinator's office. Order PO-1998, like the appeal at hand, involved access requests that were submitted on business letterhead and signed by individuals in their professional capacity.

It is interesting to note that the IPC held in Order PO-1998 that the identity of the requesters did not constitute "personal information" (although the IPC was mindful of *IPC Practices 16* in re-iterating the practice that there is no need for requesters to be identified, except in unusual circumstances, because their identity is irrelevant).

However, the Ministry was of the view that *IPC Practices 16* was of limited application to the access request that is the subject of this appeal on the grounds that *IPC Practices 16* does not speak to the issue of the disclosure of a requester's identity in the context of an actual access request under Part II of the *Act*. The Ministry was of the view that this access request, like any other access request, must be assessed and determined in accordance with the legislative provisions of Part II of the *Act*. The purpose of Part II of the *Act*, as expressed in section 1 and subsection 10(1) of the *Act*, is that there is a right of access to records subject to specific and limited exemptions.

The record at issue reveals the name, title and place of business of the requester. The Ministry viewed this information as "business identity information" and not as "personal information". The Ministry was cognizant of the recent amendment to the *Act* at subsection 2(3) which states:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

In accordance with subsection 2(3) of the *Act*, as well as previous IPC orders that have held that “business identity information” does not constitute “personal information” (which were of course decided by the IPC prior to this legislative amendment), the Ministry took the view that the identity of the [earlier] requester in these circumstances did not constitute “personal information”, and therefore that the mandatory section 21 exemption for personal information was not applicable.

Analysis/Findings

The original request in this appeal was submitted on behalf of an incorporated entity. In particular, the request was made by the appellant on the letterhead of this corporation and the request letter was signed by him on behalf of this business. I agree with the Ministry that the identity of the appellant, who was the requester in the earlier request, is not personal information as it constitutes business identity information, as opposed to “personal information” as defined in section 2(1).

As stated above, information associated with an individual in a professional, official or business capacity will generally not be considered to be “about” the individual, and is, therefore, not “personal information”. This principle has been codified in the recent amendment to the *Act* in section 2(3) which was enacted after the request in this appeal was filed. I find that the information at issue relates to the appellant in his business capacity and does not reveal anything of a personal nature about the appellant.

I also agree with the Ministry that *Practices 16*, referred to above, does not govern in the context of an access request under Part II of the *Act*. *Practices 16* addresses the kinds of circumstances when the personal information of requesters and privacy complainants may be disclosed within an institution. It is designed as a “best practices” for government agencies on how to maintain the privacy of requesters within their own organization.

As I have found that the information at issue is not personal information, it cannot qualify for exemption from disclosure by reason of section 21(1), which only applies to “personal information”. However, as the appellant has claimed that the information should not be disclosed by reason of section 17(1) of the *Act*, I will also consider whether this exemption applies to the information at issue.

THIRD PARTY INFORMATION

I will now determine whether the mandatory exemption at section 17(1) applies to the information at issue. Although the appellant raised this issue, he did not provide direct

representations on its application. He submits that:

We are strictly opposed to the release of any information with the requesters or requester as this is neither germane nor necessary for the function of their operations and could cause great economic hardship to my firm's future earnings potential as well as future information requirements from any one within the Province. As noted above there is no requirement of said information under the *Act*.

The Ministry submits that:

[It] was of the view that there were no ...exemptions under Part II of the *Act* that were applicable to the record at issue. On this point, the Ministry is unclear as to what basis the appellant is relying upon to support the subsection 17(1) (third party information) exemption. Consequently, in accordance with the access provisions in subsection 10(1) of the *Act*, the Ministry made a decision to grant full access to the record.

Section 17(1) states:

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, where 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; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Section 17(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1)

serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 17(1) to apply, the institution and/or the third party 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 paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

Part 1: type of information

The types of information listed in section 17(1) have been discussed in prior orders:

Trade secret means information including but not limited to a formula, pattern, compilation, programme, method, technique, or process or information contained or embodied in a product, device or mechanism which

- (i) is, or may be used in a trade or business,
- (ii) is not generally known in that trade or business,
- (iii) has economic value from not being generally known, and
- (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy [Order PO-2010].

Scientific information is information belonging to an organized field of knowledge in the natural, biological or social sciences, or mathematics. In addition, for information to be characterized as scientific, it must relate to the observation and testing of a specific hypothesis or conclusion and be undertaken by an expert in the field [Order PO-2010].

Technical information is information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. While it is difficult to define technical information in a precise fashion, it will usually involve information prepared by a professional in the field

and describe the construction, operation or maintenance of a structure, process, equipment or thing [Order PO-2010].

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

Financial information refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs [Order PO-2010].

Labour relations information has been found to include:

- discussions regarding an agency's approach to dealing with the management of their employees during a labour dispute [P-1540]
- information compiled in the course of the negotiation of pay equity plans between a hospital and the bargaining agents representing its employees [P-653],

but not to include:

- an analysis of the performance of two employees on a project [MO-1215]
- an account of an alleged incident at a child care centre [P-121]
- the names and addresses of employers who were the subject of levies or fines under workers' compensation legislation [P-373, upheld in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]

As stated above, the information at issue in the record consists of the name, title and the name of the business of the appellant. In my view, this information does not qualify as a trade secret, nor is it scientific, technical, commercial, financial or labour relations information. Accordingly, part 1 of the test has not been satisfied. Since all three parts of the section 17 test must be met in order for the exemption to apply, I find that the information at issue is not exempt by reason of section 17(1). As no other exemptions apply, the information at issue should be disclosed.

ORDER:

I order the Ministry to disclose the appellant's name, his title and the name of his business from the record to the requester by **April 8, 2008** not before **April 3, 2008**. For greater certainty, I have highlighted these responsive portions of the record which are to be disclosed to the requester on the copy of the record sent to the Ministry along with this Order.

Original signed by: _____
Diane Smith
Adjudicator

February 29, 2008 _____