

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3241

Appeal PA13-80

Ministry of Government Services

August 23, 2013

Summary: The requester sought access to several earlier requests made under the *Act* by another individual (the appellant). These requests gave rise to appeals which resulted in the issuance of Order PO-3142 which ordered the disclosure of certain information about the requester. The ministry decided to grant access to the earlier requests and the appellant appealed that decision. In this order, the ministry's decision to disclose the request is upheld because the requests were made by the appellant in his professional, rather than in his personal, capacity. As a result, the requests did not contain his personal information and could not qualify for exemption under section 21(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 21(1), definition of "personal information" in section 2(1).

Orders and Investigation Reports Considered: PO-3142, PO-2225, PO-2764.

OVERVIEW:

[1] The Ministry of Government Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual who was the subject of an earlier request made under the *Act* (the requester). The requester sought access to a number of earlier requests made by another individual (the appellant) which resulted in my issuing Order PO-3142. It should be noted that Order PO-3142 was the subject of an unsuccessful reconsideration request by the

requester in this appeal and is now the subject of an application for judicial review before the Superior Court of Justice (Divisional Court). The application for judicial review was also brought by the requester in this appeal.

[2] The ministry notified the appellant and four other individuals (who were also the subject of the appellant's earlier requests) under section 28 of the *Act*, seeking representations on whether it ought to disclose the earlier requests to the requester. The appellant and two other individuals objected to the disclosure of the earlier requests on the basis that they contained their personal information and were properly exempt from disclosure under section 21(1) of the *Act*.

[3] The ministry considered the submissions of the appellant and the other individuals and issued a decision to the appellant, the four individuals and the requester advising that it intended to disclose the responsive records. The ministry determined that because the responsive records did not contain personal information as that term is defined in section 2(1) of the *Act*, they did not, accordingly, qualify for exemption under the mandatory personal privacy exemption in section 21(1). The appellant appealed this decision to the Commissioner's office. None of the other four individuals appealed the ministry's decision to disclose the records.

[4] Because the appellant is resisting the disclosure of the records at issue, I sought and received his representations, initially. Because of the manner in which I will dispose of this appeal, it was not necessary for me to seek the representations of the ministry or the requester.

[5] In this order, I uphold the ministry's decision to disclose the records. Because the records do not contain "personal information" as that term is defined in section 2(1), they are not exempt from disclosure under section 21(1).

RECORDS:

[6] The records consist of six request forms filed by the appellant. The ministry's decisions relating to these requests were appealed and resulted in the issuance of Order PO-3142, which is now the subject of an application for judicial review to the Divisional Court.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

General principles

[7] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. 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;

[8] 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].

[9] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) 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.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

Representations of the appellant

[10] The appellant describes himself as "a professional searcher of public records who accesses information from public databases, often for litigation purposes." On page 4 of his representations, the appellant explains further that:

The Appellant was conducting an investigation into a possible violation of law. This is what the Appellant does for a living. Or more precisely the Appellant accesses the public record to obtain the information for others to begin their investigations.

[11] He goes on to add that the requests which form the records at issue in this appeal were submitted in order to seek access to records relating to others, the individuals who are named in the requests. The appellant also indicates that he is conducting these searches of the ONBIS database "when conducting an investigation into possible violations of law by persons suspected of using business structures improperly."

[12] The appellant maintains that his name and address, along with the names of the individuals who are the subject of his requests, "all qualify as personal information under section 2(1) of the *Act*." He goes on to state that "[S]ection 2(3) does not apply in this case to the Appellant's name and address as disclosure of the Appellant's personal information would not simply disclose the Appellant's name, title and contact information within a business or professional capacity but would also expose him/her as

the person conducting an investigation into a possible violation of law by the Requester and others.”

[13] The appellant alludes to his involvement in the conduct of “investigations into a possible violation of law” but does not provide any further elucidation as to the nature of that involvement or the organizations, if any, on whose behalf he conducts such investigations. The appellant also raises concerns about his own safety should his identity be revealed to the requester. He is of the view that the only reason the requester is seeking his name is to intimidate him or to “frustrate the process”.

[14] Much of the appellant’s remaining representations address his contention that the information about himself in the records is subject to the mandatory personal privacy exemption in section 21(1) on the basis that it falls within the ambit of the presumption against disclosure in section 21(3)(b). He argues that because he is engaged in law enforcement investigations, the presumption operates to render the disclosure of his information an unjustified invasion of his privacy under section 21(1). The appellant also suggests that the presumption in section 21(3)(b) is not “confined” to police services or other “Institutions or the Crown”; nor is it restricted to include only “criminal or quasi-criminal matters.”

Findings

[15] Some previous orders and Privacy Complaint Reports issued by this office found that someone’s identity as a requester under the *Act* qualifies as that individual’s personal information under section 2(1) of the *Act*¹.

[16] However, 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 individual². 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 individual³. Based on the decisions described above, I conclude that section 2(3) is not exhaustive in defining what constitutes business, as opposed to personal, information, contrary to the position argued by the appellant.

[17] In Order PO-2225, former Assistant Commissioner Tom Mitchinson articulated this analysis for determining the personal information/business information distinction as follows:

¹ Orders PO-2488, P-27, M-32, P-370, Privacy Complaints MC-040012-1, MC-05005-1, MC-050034-1.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

Based on the principles expressed in these [previously discussed] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

...

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[18] In Order PO-2764, Assistant Commissioner Brian Beamish addressed a similar situation involving a request for the identity of an individual who filed an earlier request and appeal under the *Act*. Assistant Commissioner Beamish found that in the circumstances of that case, the appellant's name did not constitute his personal information. He articulated the issue as follows:

While a name alone cannot be considered personal information, where a name appears in the context of a request for access to information under the *Act*, disclosure of the name would reveal both (a) the fact that the individual made a request under the *Act*, and (b) the nature of the request [see Orders M-32, PO-2488]. In this appeal, the affected party knows that a request was filed and what the nature of the request was. Therefore, the issue is whether the appellant's name as the original requester is "personal information" in the circumstances of this appeal. In order to determine the answer to this question, I adopt the approach taken by the former Assistant Commissioner Mitchinson in Order PO-2225, referred to above.

[19] Assistant Commissioner Beamish then examined the context surrounding the filing of the original request and the nature of the original requester's involvement in the subject matter of it. He found that:

The context in which the request form was filed and the information contained in the request form itself is relevant. The appellant sought access to submission and evaluation records relating to an identified RFQ process initiated by the ORC in which his employer and/or a business that he owned participated. Therefore, he sought access to information relating to the *business* relationship between the ORC and his own business and that of a number of other businesses.

The appellant also admits to having used his business contact details on the request form, a circumstance that is also relevant and to which I assign significant weight. Although I understand the appellant's position to be that he used his "business coordinates" for convenience, having regard to all the circumstances of this appeal, including the fact that the appellant offered no other evidence to support his position or to explain why he might have a personal, as compared to a business, interest in the information that was the subject of his request, I am not persuaded that he chose to use his business address simply for this reason.

I also find that there is nothing about the appellant's name in the context of this appeal that, if disclosed, would reveal something of a personal nature about the appellant. He has offered no explanation for the request or other evidence to support a finding that the request was filed for personal reasons. All other evidence before me points, in my view, to a finding that he filed his request for business reasons. The only information that would be revealed by the requested disclosure is his name and the fact that he filed an access to information request in connection with a business transaction with which his employer and/or his business was involved. For these reasons, I also find that the disclosure of this information would not reveal anything of a personal nature about the appellant.

Accordingly, I find that the appellant's name as it appears in the request form is not "personal information" because it relates to the appellant in a business capacity and not a personal capacity.

[20] I adopt this approach for the purposes of the present appeal and will analyze the facts and issues in a similar manner.

[21] In the present appeal, the appellant submitted a request for access to information contained on the ministry's ONBIS database for the names of all Ontario corporations for which certain identified individuals (including the requester in this appeal) were registered as Director, Officer, President or Vice-President under the *Ontario Corporations Act*. In addition, the appellant also sought access to ONBIS information relating to the requester's involvement in any sole proprietorships or partnerships under the *Ontario Business Names Act*. The requests identified the appellant and provided his address and daytime telephone number. There is no indication in the request forms that the appellant was seeking access to this information for some personal, as opposed to a business, purpose.

[22] The appellant acknowledges in his representations that he is "a professional searcher of public records who accesses information from public databases, often for litigation purposes" and that he "accesses the public record to obtain the information

for others to begin their investigations". In my view, the appellant's own evidence leads to the conclusion that the requests made to the ministry for information from the ONBIS database were made for a professional and business purpose, as opposed to a personal one. The appellant indicates that he makes his living performing searches of public records to obtain information which others will use for litigation purposes. Based on the supporting information submitted to me by the appellant, it appears that the services provided by the appellant appear to include the conduct of judgement debtor enforcement and collection proceedings.

[23] In my view, it is clear that the requests that are the subject of this request and the appellant's appeal were made in a professional, rather than a private or personal capacity. The appellant is in the business of gathering information from public records and this exercise was simply part of that work. As a result, I conclude that, as was the case in Order PO-2764, the appellant's name as it appears in the request form is not "personal information" because it relates to the appellant in a business capacity and not a personal capacity.

[24] I will now address the second part of the test articulated by former Assistant Commissioner Mitchinson in Order PO-2225 which asks "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?*" I have reviewed the contents of the records and find that they do not contain any information about the appellant which is inherently of a personal nature. Instead, the record simply indicate that he sought access to records maintained by the ministry's ONBIS database which listed the corporations, and in addition in the case of the requester, sole proprietorships or partnerships, for which certain identified individuals were listed as directors or officers.

[25] In my view, there is no information that is inherently personal about the appellant included in the information contained in these requests. The appellant is simply identified as the individual who made the requests, along with his address and daytime telephone number. Further, the appellant did not provide me with evidence which would enable me to conclude that the requests were made for some personal reason or that the disclosure of his identity would reveal something of a personal nature about him. On the contrary, the appellant's evidence leads to the opposite conclusion.

[26] I conclude that the information relating to the appellant that is contained in the records, his original requests for information under the *Act*, does not qualify as his personal information within the meaning of the definition of that term in section 2(1). The information relates to the appellant solely in his professional or business capacity and not in his personal capacity. The same can be said for any information pertaining to the individuals, including the requester, whose names are listed in the records as the persons about whom the appellant was seeking business information from the ONBIS database. Since any information in the records relates only to these individuals in a professional or business capacity, it cannot qualify as their "personal information" under

the definition in section 2(1) of the *Act*, as I decided in Order PO-3142 with respect to these individuals. That decision is now the subject of an application for judicial review to the Divisional Court by the requester.

[27] Furthermore, there is nothing inherently personal about the information in the records as it relates to the appellant or the individuals who were the subjects of the original requests. As a result, because the mandatory personal privacy exemption in section 21(1) can only apply to information that qualifies as "personal information", this exemption cannot apply. No other exemptions have been claimed for the records and no other mandatory exemptions apply to them. Accordingly, I find that they are not exempt under the *Act* and will order that they be disclosed to the requester.

ORDER:

1. I order the ministry to disclose the records to the requester by providing him with a copy by no later than **September 30, 2013** but not before **September 23, 2013**.
2. In order to verify compliance with order provision 1, I reserve the right to require the ministry to provide me with a copy of the records that are disclosed to the requester.

Original signed by: _____
Donald Hale
Adjudicator

_____ August 23, 2013