

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3295

Appeal PA13-201

Ministry of Government Services

January 17, 2014

Summary: The requester sought access to a request made under the *Act* by another individual (the appellant). The ministry decided to grant access to the earlier request and the appellant appealed that decision. In this order, the ministry's decision to disclose the request is upheld because the request was made by the appellant in his professional, rather than in his personal, capacity. As a result, the request 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 2(1) (definition of "personal information").

Orders Considered: Orders PO-2225, PO-2764, PO-3142 and PO-3241.

OVERVIEW:

[1] The Ministry of Government Services (the ministry) initially received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from an individual (Party A) for information relating to any involvement of a named individual (Party B) in any Ontario corporation, partnership or sole proprietorship.

[2] Party B then made an access request to the ministry under the *Act* for access to a copy of the earlier request made by Party A for information about Party B, including the identity of the requester (Party A).

[3] The ministry notified Party A under section 28 of the *Act*, seeking representations on whether it ought to disclose to Party B a copy of Party A's earlier request. Party A objected to the disclosure of the earlier request on the basis that it contained his personal information and that it was exempt from disclosure under section 21(1) (personal privacy) of the *Act*. Party A also referred to section 20 (danger to safety and health) in his letter objecting to disclosure.

[4] After receiving Party A's objections, the ministry issued a decision indicating that it was granting full access to the record to Party B. It also notified Party A of its decision.

[5] Party A (now the appellant) then appealed the ministry's decision to disclose the record.

[6] After this office received this appeal, it was placed "on hold" because another appeal (PA13-80), which addressed similar issues and records, was being processed by this office, and because the results of that other appeal could inform the decision in the current appeal.

[7] Appeal PA13-80 resulted in Order PO-3241. Order PO-3241 upheld the ministry's decision to disclose a copy of a request for information made under the *Act*. In that order, Adjudicator Donald Hale determined that the request for information could be disclosed in that appeal because the request had been made by the initial requester in his professional capacity, and it therefore did not contain the personal information of the initial requester, and could not be subject to the personal privacy exemption in section 21(1), which only applies to personal information.

[8] Although Order PO-3241 addressed issues similar to the ones raised in this appeal, the current appeal was not resolved, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the appellant (Party A), initially. The appellant was also asked to specifically address the impact of the decision in Order PO-3241 to the issues raised in this appeal.

[9] The appellant provided brief representations in response to the Notice of Inquiry, and also asked that this appeal file be placed "on hold" for certain reasons. After reviewing the appellant's representations, I decided that it was not necessary to seek additional representations from the ministry or the original requester (Party B).

[10] In this order, I find that the requested record does not contain "personal information" as that term is defined in section 2(1), and that it is therefore not exempt from disclosure under section 21(1). Accordingly, I uphold the ministry's decision to disclose the record.

RECORD:

[11] The record at issue consists of a completed request form and a one-page attachment which describes the requested information.

PRELIMINARY ISSUE

[12] As a preliminary issue, I note that in his representations the appellant asks that this appeal file be placed "on hold" for a number of reasons.

[13] In some limited cases, this office may place an appeal "on hold" or grant a postponement for the final resolution of the issues in it.¹ This might occur, for example, where the parties to the appeal are awaiting some event which may make proceeding with the file unnecessary. The limited availability of postponements is consistent with the principle that administrative tribunals should operate efficiently and expeditiously and in accordance with the principles of natural justice.²

[14] In support of his request that this file be placed "on hold," the appellant refers to two other orders of this office, namely Orders PO-3142 and PO-3252. He states that he intends to intervene in a judicial review application brought by a party to one of those orders, and is contemplating bringing an application for judicial review of the other order. Order PO-3142 dealt with access to information contained in the ministry's Ontario Business Information Systems (ONBIS) directory. Order PO-3252 addressed the issue of whether the ministry's decision to notify an affected party under section 28 was reasonable, and found that it was.

[15] The appellant states:

If a determination is made by the Divisional Court that the section 28 notice to the requester was improper it will bring a different light to the matter. The notification of [the original requester in this appeal] may in fact be a breach under the *Act* of my statutory right of access. ...

[16] The appellant then argues that the effect of a successful judicial review may result in a finding that Orders PO-3241 and PO-3252 were procedurally unfair, as the notification of the affected parties "may not have had any legal justification." He then states:

Proceeding with this appeal at this time deprives me of potentially useful findings by the Divisional Court that may impact how I wish to argue here....

¹ See, for example, Orders MO-1424-I and MO-1978-I.

² See Order MO-1424-I.

Accordingly, I request that this matter be put in abeyance until the final determination of the judicial reviews that will soon be before the Divisional Court.

[17] After reviewing the appellant's representations, I have decided to deny the appellant's request that I place this appeal file "on hold."

[18] To begin, I note that Order PO-3142 deals with access to information contained in the ONBIS directory, and does not address issues similar to those raised in this appeal.

[19] I also note that no Notice of Application for Judicial Review has yet been filed for Order PO-3252. However, even if a judicial review of Order PO-3252 had been filed, I am not persuaded that this would have any impact on the findings in this appeal. Order PO-3252 addressed the issue of whether the ministry's decision to notify an affected party under section 28 was reasonable, and found that it was. Even if a court were to find that notification in those circumstances was not reasonable, the issue in this appeal is whether the record, which is a completed request form and a one-page attachment, qualifies for exemption under section 21(1) of the *Act*. I find that whether the notification was or was not reasonable will not impact my findings on the issue in this appeal. As a result, I deny the appellant's request that this file be placed "on hold."

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?

[20] 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;

[21] 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.³

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

³ Order 11.

(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.

[23] 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.⁴

[24] 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.⁵

The appellant's position

[25] As noted above, the record at issue consists of a completed request form and a one-page attachment which describes the requested information. The request form includes the appellant's name, address and telephone number. In his initial response to the section 28 notification by the ministry, the appellant objected to the disclosure of his name and other contact information on the basis that it constituted his personal information.

[26] In response to the Notice of Inquiry sent to the appellant, the appellant does not directly address the issue of whether the record contains his personal information. The appellant's representations focus primarily on his request that this matter be placed on hold; however, with respect to the disclosure of the record, the appellant states that, if I decide not to place this file "on hold," I should release the record "forthwith."⁶

[27] However, in the appellant's initial response to the ministry's notification, he provides information in support of his position that the record contains his personal information. He concedes that he made the access request in a business capacity, but then states:

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ I note that this office does not release records, rather, it determines access issues and, if records are to be released, it orders the institution to release them. I also note that the personal privacy exemption in section 21(1) is a mandatory exemption.

... however, it must be understood that the request was not done in an effort to further any business interests. Searching public records for others *is* my business. [Emphasis in original]

[28] The appellant also refers to the fact that, as part of his business, he has searched public databases across North America, and routinely conducts similar searches of certain named corporation databases.

Analysis and findings

[29] As noted above, the appeal resulting in Order PO-3241 addressed similar issues and records to those at issue in this appeal. In that order, Adjudicator Donald Hale upheld the ministry's decision to disclose a copy of a request for information made under the *Act* because the request had been made by the requester in his professional capacity, and it did not contain the requester's personal information.

[30] In making that finding, Adjudicator Hale noted that previous orders and Privacy Complaint Reports issued by this office have found that an individual's identity as a requester under the *Act* can qualify as that individual's personal information under section 2(1) of the *Act*.⁷ He then stated:

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 individual⁸. 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 individual⁹. ...

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

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?

...

⁷ Orders PO-2488, P-27, M-32, P-370, Privacy Complaints MC-040012-1, MC-05005-1, MC-050034-1.

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁹ Orders P-1409, R-980015, PO-2225 and MO-2344.

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?

[31] Adjudicator Hale then referred to Order PO-2764 in which Assistant Commissioner Brian Beamish addressed a similar situation involving a request for the identity of an individual who had filed an earlier request and appeal under the *Act*, and in which the Assistant Commissioner found that, in the circumstances of that case, the appellant's name did not constitute his personal information. The issue was articulated by Assistant Commissioner Beamish 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.

[32] In Order PO-2764, 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, and made the following findings:

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.

[33] Adjudicator Hale adopted this approach for the purposes of Order PO-3241 and, after reviewing the facts and issues in that appeal, made the following findings:

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*. ... 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.

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. ...

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.

[34] Adjudicator Hale then addressed the second part of the test articulated by former Assistant Commissioner Mitchinson in Order PO-2225, namely, "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?*" He states:

... 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.

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.

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. ...

[35] I adopt the approach to this issue taken in the orders referred to above, and apply it to the circumstances of this appeal.

[36] In this appeal, the appellant submitted a request for access to information contained on the ministry's ONBIS database for information relating to any involvement

of a named individual (Party B) in any Ontario corporation, partnership or sole proprietorship. The request identifies the appellant and includes an address and daytime telephone number, which appear to be his professional contact information. Indeed, the appellant acknowledges that he made the access request in a business capacity, and that searching public records on behalf of others is his business.

[37] In the circumstances of this appeal, based on the information in the request and the information provided by the appellant, I find that the request made to the ministry for information from the ONBIS database was made by the appellant in a professional capacity, and not a personal capacity. As a result, I find that the appellant's name as it appears in the request form is not "personal information," because it relates to him only in a professional or business capacity.

[38] In addition, I am not satisfied that the disclosure of the record would reveal something of a personal nature about the appellant. The record is a request containing the appellant's name and his professional contact information, and is a request for access to business information relating to another named individual. I also note that the appellant was given a copy of Order PO-3241 along with the Notice of Inquiry, and was asked to provide representations on the impact of the findings in that order, and he declined to do so. The appellant has not provided any representations in support of a finding that disclosure of the record would reveal something of a personal nature about him. Therefore, based on the information in the record at issue, I find that there is no information that is inherently personal about the appellant included in the record.

[39] As a result, I find that the information contained in the record does not qualify as the personal information of the appellant 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.

[40] Having found that the record does not contain the personal information of the appellant, and because the mandatory personal privacy exemption in section 21(1) can only apply to information that qualifies as "personal information", this exemption cannot apply. Accordingly, I find that the record does not qualify for exemption under section 21(1) of the *Act*, and I will order that it be disclosed to Party B (the requester in this appeal).

[41] As a final matter, I note that the appellant initially identified a concern that the exemption in section 20 of the *Act* may apply to the record. However, other than reference to this exemption made by the appellant in the early stages of this appeal, the appellant has not provided any representations in support of a finding that this exemption might apply. I also note that the appellant's initial references to this exemption were general in nature, referring generally to concerns about the disclosure of information of this kind, and were not specific to either the record or the circumstances of this appeal. I also note that, by referring to his wish that the record

be disclosed "forthwith" if this file is not placed on hold, the appellant appears to have abandoned this issue. I will, accordingly, not address this issue in this order.

ORDER:

I uphold the ministry's decision to disclose the record to the original requester, and order the ministry to disclose the record to the requester by providing him with a copy by **February 24, 2014** but not before **February 19, 2014**.

Original signed by: _____
Frank DeVries
Adjudicator

January 17, 2014