



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

ORDER P-318

Appeal P-910661

Ministry of Consumer and Commercial Relations



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ORDER

BACKGROUND :

The Ministry of Consumer and Commercial Relations (the institution) received a request from an individual for access to all documents which mentioned his name in connection with the Toronto branch of the Star Trek Fan Club ("Star Trek Toronto").

The following records were identified as being responsive to this request:

1. Letter dated February 28, 1991 from a named individual to Blair K. Ryza, an employee of the institution (the transmittal letter).
2. Six sets of Corporations Information Act Form 1 documents, filled out by the named individual and enclosed with the letter (the Form 1 records).

The institution determined that release of these records might affect the interest of the named individual (the affected person) under section 17 of the Freedom of Information and Protection of Privacy Act (the Act). Consequently, notice was sent to this affected person, pursuant to section 28 of the Act. After receiving representations from the affected person, the institution decided to release the records to the requester, and notified the affected person accordingly. The affected person (the appellant) appealed the institution's decision to this office.

Attempts to mediate the appeal were not successful. Accordingly, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution and the original requester. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making representations concerning the subject matter of the appeal. In addition to the section 17 exemption, the parties were also asked to consider the possible application of section 21 of the Act. Representations were received from the appellant and the institution, but not from the original requester.

During the course of the inquiry the original requester clarified the scope of his request. He advised the Appeals Officer that he was interested in determining the name of the person who had mentioned his name in connection with Star Trek Toronto, as well as the substance of any remarks made by that person about him. The original requester was not interested in receiving access to the names of other individuals referred to in the records. Only two of the Form 1 records refer to the appellant, and they also contain the names and addresses of several other individuals. In light of the requester's comments regarding the scope of the request, I find that the names and addresses of other individuals which appear on the Form 1 records fall outside the scope of this appeal, and are not covered by this order. I will attach a copy of the Form 1 records with the copy of this order provided to the institution, which will indicate the portions of these records which fall outside the scope of this order.

ISSUES:

The issues arising in this appeal are as follows:

1. Whether the mandatory exemption provided by section 17 of the Act applies to any of the records.
2. Whether the mandatory exemption provided by section 21 of the Act applies to any of the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the mandatory exemption provided by section 17 of the Act applies to any of the records.

Section 17(1) reads as follows:

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,

In Order 36, former Commissioner Sidney B. Linden established a three-part test, each part of which must be satisfied in order for a record to be exempt under sections 17(1)(a), (b) or (c). Subsequent to the issuance of Order 36 section 17(1) was amended to include a new section 17(1)(d). This new section is not covered by the test in Order 36 and also is not relevant in the circumstances of this appeal. The test for exemption under sections 17(1)(a), (b) or (c) is as follows:

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 types of harms specified in (a), (b), or (c) of section 17(1) will occur.

Because the institution is prepared to disclose the records, the burden of establishing that the requirements of the test for exemption under section 17(1) rests with the appellant.

Turning to the first part of the test, I must consider whether the disclosure of the information contained in the records would "reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information". The only category of information which has potential relevance in the context of this appeal is commercial information.

In his representations the appellant submits that the records contain commercial information, but offers no evidence in support of his position.

In order to qualify as commercial information, the information must relate to some form of activity "pertaining or relating to or dealing with commerce" (Order 179).

In my view, the information contained in the records is not commercial information as that term is understood in section 17(1). The Form 1 records contain information which is merely descriptive of the corporation, setting out the corporate name, the address of the corporate office, and the names of some of

the directors and officers of the corporation; and the transmittal letter simply provides an explanation of certain circumstances surrounding the submission of the forms. These records do not relate to activities normally associated with commercial activity, such as the exchange of goods, products or property, or the buying, selling or exchange of goods and services.

Therefore, I find that the first part of the test for exemption under section 17(1) has not been satisfied.

Because all three parts of the test must be satisfied in order for a record to qualify for exemption under sections 17(1)(a), (b) or (c), I find that all records at issue in this appeal do not qualify for exemption under section 17(1) of the Act.

ISSUE B: Whether the mandatory exemption provided by section 21 of the Act applies to the portions of the records at issue.

In order to qualify for exemption under section 21, the information contained in the records must fall within the definition of personal information in section 2(1) of the Act. That section reads, in part, as follows:

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

- (d) the address, telephone number, fingerprints or blood type of the 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,
- (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 Form 1 records contain various general information about the corporation, including the names and addresses of individuals who acted as officers or directors of the corporation. They also contain the name and signature of the individual who submitted the documents for filing, in this case the appellant. In my view, the names and addresses of the appellant and the requester contained in the Form 1 records are the personal information of those individuals. All other information in these records falls outside the scope of this appeal.

As far as the transmittal letter is concerned, the appellant submits that it was provided to the institution with an expectation that it would be treated confidentially. The envelope containing the record was marked "personal and confidential". The institution did not make any specific representations regarding this record.

I have carefully reviewed the contents of this record and, in my view, it does not satisfy the requirements of paragraph (f) of the definition of personal information. The record is a letter of transmittal which was sent to the institution together with a series of Form 1 records which were intended to be filed under the Corporations Information Act. The record contains explanatory information related to the forms, but no information which could objectively be characterized as "of a private or confidential nature". However, I find that the name and address of the appellant which is contained in this record qualifies as the personal information of the appellant under paragraphs (d) and (h) of the definition.

Therefore, I find that the names and addresses of the appellant and the requester found on the Form 1 records, and the name and address of the appellant contained in the transmittal letter qualify as personal information, and that all other information contained in the records either does not satisfy the requirements of the definition or falls outside the scope of this appeal.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this personal information to any person other than the individual to whom it relates, except in certain circumstances. One such circumstance is contained in section 21(1)(c) of the Act, which 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;

The institution submits that the information contained on the Form 1 records was collected and maintained specifically for the purpose of creating a personal information bank available to the general public. The institution points out that the Form 1 records must be completed and filed with the institution, pursuant to section 4 of the Corporations Information Act. Section 10 of the same statute provides the public with a right of access to these records.

As far as the Form 1 records at issue in this appeal are concerned, the institution states that they were not actually placed on the publicly available personal information bank only because they were improperly completed. In the institution's view, the records were submitted by the appellant with an implicit understanding that they would become part of this information bank.

The appellant states that the Form 1 documents were completed "to the best of my knowledge at the time I completed them", and that he was not sure whether they would be placed on the publicly available personal information bank at the time of their submission. He points out that the documents were not actually put on this personal information bank, and that he understood that the forms would be reviewed by the institution for accuracy before a decision was made to make them publicly available.

In my view, it is clear that the information contained on the Form 1 records was collected specifically for the purpose of creating a record available to the general public. These records were submitted pursuant to the requirements of section 4 of the Corporations Information Act, and, as noted earlier, section 10 of this statute provides a right of access by members of the public to these type of records. However, 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. In the circumstances of this appeal, the Form 1 records contained errors and never became part of the publicly available

personal information bank. Therefore, in my view, the exception provided by section 21(1)(c) of the Act does not apply to the Form 1 records.

The other exception to the personal information exemption which is relevant in the circumstances of this appeal is section 21(1)(f), which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

In his representations, the appellant states that records were submitted to the institution in confidence, and points out that the envelope containing the records was marked "personal and confidential".

The institution makes no specific comment about the transmittal letter, but submits that the information contained in the Form 1 records could not have been supplied in confidence. It states:

There is a statutory requirement to supply the information in question. There are statutory provisions for public access to this information. Accordingly there is no documentation of confidentiality and no assurances of confidentiality would have been given.

Having reviewed the records and the representations of the parties, in my view, the circumstances under which the Form 1 records were submitted to the institution are inconsistent with a reasonable expectation of confidentiality, and I find that release of the records would not constitute an unjustified invasion of the appellant's personal privacy. The appellant acknowledged that it was his understanding that if the Form 1 records were accurate, they would be placed on the publicly accessible personal information bank. That being the case, in my view, it is not credible for the appellant to claim that disclosure would constitute an unjustified invasion of his privacy, simply because the information was inaccurate. Because the name and address of the appellant is contained in the Form 1 records, I find that release of the same information contained in the transmittal letter would also not constitute an

unjustified invasion of the appellant's personal privacy, in the circumstances of this appeal.

ORDER:

1. I uphold the head's decision to disclose all records to the original requester, subject to the severance of all information contained in the Form 1 records which I have found to be outside the scope of the original request. I have attached a severed copy of the Form 1 records with the copy of this order provided to the institution, indicating the information which should be released to the appellant.
2. I further order the institution not to make this disclosure until thirty (30) days following the date of the issuance of this Order. This time delay is necessary to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided that notice of an application for judicial review has not been served on the Information and Privacy Commissioner/Ontario and/or the institution within this thirty (30) day period, I order that the unsevered parts of the records be disclosed within thirty-five (35) days of this Order.
3. The institution is ordered to advise me in writing within five (5) days of the date on which disclosure was made. Any notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.
4. In order to verify compliance with the provisions of this Order, I order the head to provide me with a copy of the records which are disclosed to the appellant pursuant to provision 1, only upon my request.

Original signed by: _____

June 19, 1992

Tom Mitchinson
Assistant Commissioner