



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-1469

Appeal P\_9700142

Ministry of Consumer and Commercial Relations



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## **NATURE OF THE APPEAL:**

The Ministry of Consumer and Commercial Relations (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for all information relating to a named credit and collections company (the company), formerly licensed by the Ministry. The requester, a reporter, sought access, in particular, to all complaints and investigative documents and reports filed by Ministry investigators and legal counsel from July 7, 1994 to January 22, 1997 (the date of the request).

The company had been licensed by the Ministry pursuant to the Collection Agencies Act (the CAA) but after an investigation was conducted into its affairs, its licence was revoked and its accounts frozen.

The Ministry granted partial access to the records. The Ministry denied access to the remaining records, in whole or in part, on the basis of the following exemptions:

- advice or recommendations - section 13(1)
- law enforcement -sections 14(1) and (2)
- third party information - section 17(1)
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1)

The requester appealed the decision to deny access to the remaining records.

During mediation, the appellant indicated that he was no longer seeking access to Records 3(b), 4 and 7(b), as identified on an index of records provided by the Ministry. In addition, he was also not seeking access to the name and address which appeared at the top of Record 1 and the name of an individual which appeared midway on the same page. Therefore, the only part of Record 1 which remains at issue consists of the last sentence on the first page.

This office provided a Notice of Inquiry to the appellant, the Ministry and the principal of the company (the affected person). A copy of the Notice of Inquiry was also provided to counsel for the affected person and the company. Representations were received from the appellant and the Ministry only.

In its representations, the Ministry indicated that it had reconsidered its decision and, subject to any representations from the affected person, was now prepared to grant access to Records 3(c), 3(d), 5(b), 5(c), 5(d), 5(e), 5(f), 6(b), 7(a), 7(c), 9, 11, 12 and 22. Therefore, it was no longer relying on the exemptions provided by sections 13(1), 14(1) and (2), 17(1) and 19. With respect to Record 6(a), it indicated that it was no longer relying on section 17 but was still claiming section 21(1) with respect to the name and residential address of an individual which appears on page 5 of the record. The Ministry also confirmed that it was now willing to disclose the last sentence on Record 1.

As I have indicated previously, no representations were received from the affected person or the company or their counsel. However, the Commissioner's office has an inherent obligation to

uphold the integrity of Ontario's access and privacy scheme. Because section 17(1) is a mandatory exemption and the company has not consented to the disclosure of the records, I will review Records 5(b) and 6(a) to determine whether section 17(1) applies. I will order the Ministry to disclose the remaining records, i.e Records 1 (with the names and the address removed), 3(c), 3(d), 5(b), 5(c), 5(d), 5(e), 5(f), 6(b), 7(a), 7(c), 9, 11, 12 and 22 to the appellant.

In its representations, the Ministry states that it is relying on section 21(1) of the Act to withhold access to Records 10 and 17, in their entirety, and Records 6(a), 8, 13, 15, 16, 18 and 20 in part.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

For a record to qualify for exemption under section 17(1)(a), (b) or (c), the party resisting disclosure, i.e. the Ministry and/or the company 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) will occur.

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All three parts of the test must be satisfied in order for the exemption to apply.

### **Type of Information**

I have reviewed Records 5(b) and 6(a) and I find that they contain information about the company's bank accounts. I find that this information qualifies as commercial and financial information.

### **Supplied in Confidence**

In order for this part of the section 17(1) test to be met, the information must have been supplied to the Ministry by the company, in confidence, either implicitly or explicitly. There is no evidence on the face of the records to indicate that the information was supplied to the Ministry by the company in confidence explicitly. The Ministry no longer relies on this exemption and neither the company nor its principal has made any representations. I have not been supplied with any evidence to establish that the information in the records was supplied by the company to the Ministry in confidence implicitly. In my view, the second element of the exemption has not been met. However, I will now continue to review the third element of the section 17 exemption.

## **Harms**

In order to meet this part of the test, the Ministry and/or the company must show how disclosure of the information in the record could reasonably be expected to result in the harms described in section 17(1)(a), (b) or (c) of the Act.

As I have indicated previously, the Ministry no longer relies on this exemption. Therefore, the onus to establish the harms test rests entirely on the affected person and/or the company, neither of whom have made any submissions.

Since all three parts of the test must be satisfied, I find that the exemption in section 17(1) of the Act does not apply.

## **PERSONAL INFORMATION AND INVASION OF PRIVACY**

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and I find that page 5 of Record 6(a) contains the residential address of an identifiable individual; Record 20 and page 2 of Record 8 contain the home telephone number of the same individual; Record 10 contains the driving history of seven identifiable individuals; Record 13 on page 2 contains the residential address of an identifiable individual; Records 15, 16 and 18 are investigators’ handwritten notes and contain the names, home addresses and telephone numbers together with employment information of identifiable individuals; Record 17 is a vehicle ownership record and contains the name and residential address of the owner. I find that this information constitutes the personal information of those individuals. None of this information relates to the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One of these is found in section 21(1)(f) which states:

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.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) as well as all other circumstances that are relevant in the circumstances of the appeal. The Ministry submits that the presumption in section 21(3)(b) of

the Act applies as the information in the records was compiled and is identifiable as part of an investigation into a violation of law (the CAA).

I have reviewed the personal information at issue. I accept the Ministry's submissions and I find that the presumption applies and that disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 21(3)(b).

None of the personal information falls under section 21(4) of the Act. I have highlighted the portions of the records that I have found to be exempt under section 21(3)(b) on the copies of the records which have been provided to the Ministry's Freedom of Information and Privacy Co\_ordinator with this order.

### **PUBLIC INTEREST IN DISCLOSURE**

The appellant submits that section 23 applies in that a public interest exists in the disclosure of the record. Section 23 of the Act states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

In order for section 23 to apply, two requirements must be met: first, there must be a compelling public interest in the disclosure of the record and second, this interest must clearly outweigh the purpose of the exemption which otherwise applies to the record.

As I have indicated previously, the appellant has received access to the bulk of the records responsive to his request. What remains at issue are the names, home addresses, home residential telephone numbers and vehicle driving and ownership history of individuals other than the appellant. In my view, any public interest that exists has been satisfied by the disclosure of the information that has already been released to the appellant and the information that I have ordered to be released thus far. I find that there is no compelling public interest in the disclosure of the personal information that I have found to be exempt under section 21(3)(b) and the presumption has not been rebutted.

### **ORDER:**

1. I uphold the Ministry's decision to deny access to Records 10 and 17 in their entirety and the highlighted portions of Records 6(a), 8, 13, 15, 16, 18 and 20.
2. I order the Ministry to disclose the last sentence on Record 1, Records 3(c), 3(d), 5(b), 5(c), 5(d), 5(e) 5(f), 6(b), 7(a), 7(c), 9, 11, 12 and 22 and the non-highlighted portions of Records 6(a), 8, 13, 15, 16, 18 and 20 to the appellant by sending him a copy by **November 24, 1997** but not before **November 19, 1997**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ October 20, 1997