



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

ORDER PO-1913

Appeal PA-000309-1

Alcohol and Gaming Commission of Ontario



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NATURE OF THE APPEAL:

The appellant submitted a request to the Alcohol and Gaming Commission of Ontario (AGCO) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). He specifically sought access to the name of the individual who filed a complaint against a certain establishment, which resulted in an investigation by the AGCO.

The AGCO located two records as responsive to the request. It granted access to the Inspection Report in its entirety, and partial access to the Inspection Complaint Record. In denying access to portions of the Inspection Complaint Record, the AGCO relied on the exemption in section 21 (invasion of privacy) of the *Act*.

Mediation was not successful. I sent a Notice of Inquiry to the AGCO and the complainants (affected persons) initially, inviting their representations on the issues raised by the appeal. I received representations from the AGCO only, the non-confidential portions of which were shared with the appellant. The appellant provided submissions in response.

RECORDS:

The record at issue consists of one page of an Inspection Complaint Record. The appellant is seeking only the identity of the complainant(s).

DISCUSSION:

PERSONAL INFORMATION

The first issue to be determined is whether the record contains personal information and if so, to whom that personal information relates.

Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual. “Personal information” may include 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 [paragraph (h)], and the address and telephone number of individuals [paragraph (d)].

The record at issue contains the name of an establishment, but not the name of the appellant personally. Previous orders of this office have interpreted “personal information” to mean a natural person; it does not apply to information about other entities such as corporations, partnerships, sole proprietorships or business organizations (Orders 16 and M-138). Accordingly, the record does not contain the appellant’s personal information.

The record also contains the names of the affected parties and other information related to them including an address and telephone number. The AGCO submits that a complainant’s name, when associated with the filing of a complaint, constitutes personal information. It also states that it is unclear whether the information appearing on the record was provided by the affected persons or were subsequently added by the AGCO staff person who received the complaint. The

appellant provides a chronology of the events that led him to file this appeal, but does not respond to the AGCO's position on this issue.

I accept the AGCO's assertion and find that the record contains personal information of the affected persons, including their address and telephone number [paragraph (d)]. In particular, disclosure of the affected persons' names alone, in these circumstances, would reveal other information about them [paragraph (h)], specifically the fact that these individuals complained to the AGCO regarding a possible contravention of the *Liquor Licence Act* and the Regulations.

The records also include the name of the AGCO staff person who received the complaint. As the information was provided in his professional capacity it does not qualify as "personal information" (Orders P-257, P-427, P-1412 and P-1621).

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances, the only exception which could apply is section 21(1)(f), which reads:

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) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the *Act* or where a finding is made under section 23 of the *Act* that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.)].

In its representations, the AGCO submits that disclosure of the requested information would constitute an unjustified invasion of personal privacy under section 21(3)(b). This section reads:

A disclosure of personal privacy is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

The AGCO submits:

The information severed from record 1 consists of the name, address and telephone number of two individuals who provided information to the AGCO respecting possible violations of a Regulation.

...

The AGCO, together with local police services, is responsible for enforcing the *Liquor Licence Act* and the Regulations made under it. Local police services have jurisdiction to lay charges under the *Liquor Licence Act* and its Regulations, as do AGCO Inspectors. Any complaints about possible violations of the *Liquor Licence Act* and Regulations may be investigated by the AGCO and are relevant to the AGCO's role of regulating individuals and companies licensed under that *Act*.

The appellant asserts that the complaint is totally without merit or foundation and that it "should be considered to be malicious". It is the appellant's belief that he should be provided with the opportunity to confront those who made the allegation. He also implies that the disclosure of the information is relevant to a fair determination of his rights under section 21(2)(d).

Previous orders have established that the investigative and compliance functions of the AGCO (through its predecessor, the Liquor Licence Board of Ontario), with respect to regulating individuals and companies that are licenced under the *Liquor Licence Act*, qualify as "law enforcement" activities (see, for example, Order P-1297). Therefore, personal information which is compiled as part of such an investigation by AGCO staff constitutes an "investigation into a possible violation of law within the presumption at section 21(3)(b). The presumption may still apply, even if, as in the present case, there was no infraction determined (Orders M-198, P-223, P-237 and MO-1256).

On the face of the record, it is clear that the names, address and telephone number of the complainants were compiled and are identifiable as part of the AGCO's investigation into a possible violation of the *Liquor Licence Act* and its Regulation. The presumption in section 21(3)(b), therefore, applies and disclosure of this information is presumed to be an unjustified invasion of personal privacy.

I find that the record at issue qualifies for exemption under section 21(1) of the *Act*. I also find that none of the circumstances outlined in section 21(4), which would overcome a section 21(3)(b) presumption, are present in this appeal. The appellant has not raised the application of the public interest override and I find, in the circumstances of this appeal, that it does not apply.

ORDER:

I uphold the AGCO's decision.

Original signed by: _____
Dora Nipp
Adjudicator

_____ June 21, 2001