



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1929

Appeal PA-010011-1

Ontario Securities Commission



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NATURE OF THE APPEAL:

The Ontario Securities Commission (the “OSC”) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of an OSC investigation report and the address of service for a named individual. The requester, now the appellant, and the named individual are involved in a legal dispute.

The OSC located two responsive records and denied access to both in their entirety. With respect to the investigation report, the OSC claimed the exemption at section 14 (law enforcement) of the *Act*. It denied access to the address of the named individual on the basis of the exemption at section 21 (invasion of privacy).

Mediation of this appeal was not successful and I sent a Notice of Inquiry to the OSC initially, inviting representations on the issues raised by this appeal. The OSC returned submissions, the non-confidential portions of which were shared with the appellant. The appellant, through her legal counsel, also submitted representations in response to the Notice.

RECORDS:

There are two records at issue in this appeal, a 21-page memorandum on the investigation of named companies (“investigation report”), and a two-page letter on which the address for service of the named individual appears (“address for service”). The named individual was a representative of one of the named companies.

DISCUSSION:

PERSONAL INFORMATION

The first issue to determine is whether the records contain personal information, as defined under the *Act*, and to whom that information relates.

“Personal information” is defined in section 2(1) of the *Act*, in part, as 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 ... 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,

...

- (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;

Investigation Report

In past orders, this office has determined that information about identifiable individuals in their capacity as representatives of a business or corporation is not considered to be information "about" these individuals, and therefore does not qualify as their "personal information" within the meaning of the definition in section 2(1) (see Reconsideration Order R-980015).

Previous orders have also considered the issue of whether certain information contained in records held by the OSC regarding its investigations qualified as personal information (see, for example, Orders P-1636 and PO-1883). In Interim Order P-1636, Adjudicator Laurel Cropley stated:

The records pertain to several OSC investigations into the activities of a number of companies involved in the buying, selling and promotion of stocks. The OSC investigations examined a large number of transactions involving these firms, which necessitated the compilation of a great deal of information about the trading in securities by many identifiable individuals. As a result, many of the records contain a great deal of information which qualifies as "personal information" within the definition in section 2(1)(b) as it relates to "financial transactions" in which each of these individuals, including the appellant, were involved.

In Interim Order P-1636, the records also included personal information that was generated from computer searches, such as birth dates, home address, social insurance number, employer, and place of birth. Adjudicator Cropley found this information to qualify as "personal information" under paragraphs (a), (b), (c), (d) and (h) of section 2(1).

I agree with Adjudicator Cropley's analysis and find it to be relevant to the investigation report, which relates to an investigation of complaints to the OSC.

In the case before me, the OSC conducted an investigation into various activities of the named companies which were involved in mutual funds. The investigation report contains the names of individuals in their capacity as representatives of these companies. It also contains information "about" these identifiable individuals, including detailed information about their "financial transactions", the allegations against them, their views and opinions in response to the allegations, and staff recommendations with respect to the allegations. I am satisfied that this information qualifies as personal information under paragraphs (b), (d), (g) and (h) of sections 2(1) of the *Act*.

The investigation report does not contain the appellant's personal information.

Address for Service

The two-page letter relates to an "Application for Registration as a Mutual Fund Dealer". It was submitted by legal counsel on behalf of a named company, and cites the named individual together with his/her address for service.

In their submissions, the OSC and the appellant both referred to Order 80 in which former Commissioner Sidney Linden distinguished "corporate information" from "personal information". The OSC argues that the named person's address for service is "recorded information about the individual". It states:

... it is not necessary to consider the address for service of the named individual to be information of the organization given that the named company would have been required to provide its own address for service as party of its registration with the OSC.

The appellant's position is that the address of officers and representatives is "corporate information" as considered in Order 80.

When information is linked to other personal information, such as a home address, that personal information falls within the ambit of paragraphs (d) and (h) of section 2(1) (see, for example, Orders MO-1309 and P-1636). In the present case, although the license applicant was a corporation and the named individual was a representative of the corporation, the address for service is a residential address. Therefore, the address for service qualifies as personal information under section 2(1)(d) and (h).

INVASION OF PRIVACY

Introduction

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. Where a requester seeks personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the *Act* prohibits an institution from releasing this information.

Section 21 provides guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Disclosing the types of information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 21(3) applies, section 21(2) requires me to consider all relevant circumstances, including the factors specifically listed therein and unlisted factors, in order to determine whether disclosure would constitute an unjustified invasion of personal privacy.

Section 21(3): presumption against disclosure

Although the OSC has not claimed the exemption at section 21(3)(b) for the 2-page letter, it is a mandatory exemption and I will consider its application to both records at issue in this appeal.

This section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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 OSC submits that the information contained in the investigation report was compiled as part of an investigation into possible violations of the *Securities Act*, and disclosure of such information is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(b).

The appellant asserts that she is seeking corporate information only and suggests that the personal information contained in the investigation report may be addressed by severing the personal information. With respect to the 2-page letter, the appellant relied on the factor in section 21(2)(d) (fair determination of rights) in favour of disclosure. In her submissions, the appellant's legal counsel states:

. . . It would be unfair that the operation of the privacy legislation would impede our client in the enforcement of her legal rights. . . . Our client is a consumer who is a judgment creditor of a registered corporation, not an individual.

Previous orders have established that investigations by the OSC under provisions of the *Securities Act* are properly considered law enforcement investigations (Orders 30, P-548, P-1321 and P-1492). Further, these decisions found that the OSC is an agency that has the function of enforcing and regulating compliance with the law.

I have reviewed the investigation report and it clearly pertains to the investigation of violations under the *Securities Act*. The investigation report discusses the written and testimonial evidence that was collected, and sets out the observations, analyses and recommendations of OSC professional and legal staff. In my opinion, the address for service was also compiled for and is identifiable as part of, the OSC's investigation into a possible violation of law.

Based on the foregoing, I find that the investigation report and the address for service meet the requirements of the presumption found under section 21(3)(b).

None of the exemptions under section 21(4) apply and the appellant has not raised the possible application of section 23 of the *Act*. Having found that section 21(3)(b) applies, as stated earlier, I cannot consider whether any of the factors in section 21(2) might justify disclosure of the information contained in the investigation report.

As I have disposed of this issue under section 21(3)(b), it is not necessary for me to consider the application of the exemptions claimed at section 14.

ORDER:

I uphold the OSC's decision.

Original signed by: _____
Dora Nipp
Adjudicator

July 30, 2001 _____