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

ORDER PO-2190

Appeal PA-030045-1

Ministry of the Attorney General

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NATURE OF THE APPEAL:

This is an appeal from a decision of the Ministry of the Attorney General (the Ministry), made under the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The requester (now the appellant) sought access to the following information:

> I would like access to a record of all unpaid fines imposed for convictions under the Ministry of the Environment's Environmental Protection Act, Environmental Assessment Act, Ontario Water Resources Act and Pesticides Act. I would like this record to be limited to businesses, individuals, corporations and municipalities in Hamilton and Burlington. I would like this record to include i) the names of businesses, individuals, corporations and municipalities that owe fines, ii) the amount of fines owing, iii) the infractions for which the fines were imposed, and iv) the dates the fines were imposed.

In response to the request, the Ministry issued an initial decision letter advising the appellant that the responsive records were documents that contained information relating to named individuals and named businesses. The Ministry denied access to the portions of the records relating to named individuals, relying on the mandatory exemption under section 21 (unjustified invasion of personal privacy) of the *Act*.

With respect to the named businesses, the Ministry notified these businesses of the request and provided them with an opportunity to express their views on the potential disclosure of their information. After reviewing the responses received, the Ministry issued a subsequent decision letter to the appellant, granting access to some information relating to named businesses, and denying access to the rest, again pursuant to section 21 of the *Act*.

The appellant has appealed from the Ministry's decision to deny access to some of the information in the records.

During the course of mediation through this office, certain issues were clarified. The appellant raised the possible application of the public interest override contained in section 23 of the *Act*, and that section has been added to the appeal. Below, under "Preliminary Issue", I will discuss an issue arising out of the results of mediation.

At the outset of this inquiry I decided to deal with this appeal and Appeal No. PA-030046-1 together, and sent a common Notice of Inquiry to the parties. After consideration, however, I have decided to issue a decision in this appeal at this time. I intend to seek more representations on the issues raised by Appeal No. PA-030046-1.

I sent a Notice of Inquiry to the Ministry, initially, inviting it to submit representations on the facts and issues in dispute. I also sent the Notice to a number of affected parties. Although the Ministry has only relied on section 21 in denying access to the information in the records, some of the named businesses who responded to the Ministry's notification referred to section 17(1) of

the *Act* (third party information). As this is a mandatory exemption, I also included this in the Notice.

I received representations from the Ministry and 4 affected parties, in relation to this appeal. The Notices sent to three affected parties were returned as undeliverable. Two of the affected parties object to the release of their information; two indicate that their fines have been paid, one of which also consents to its information being disclosed. The Ministry's representations and some of those of affected parties were then shared with the appellant, along with the Notice. The appellant also submitted representations in response to the Notice.

RECORDS:

The record at issue is a twelve-page document entitled "ICON Financial Subsystem, Detail Report on Outstanding MOE Fines". The document refers to convictions in the Burlington court from January 1, 1999 to December 11, 2002, in relation to four environmental protection statutes and associated regulations noted in the request. The document contains columns containing information on the names and addresses of parties convicted under the noted legislation, a case identification number, the nature of the charge, the date of the conviction, the due date of the fine, and the total amount owing.

DISCUSSION:

PRELIMINARY ISSUE

Scope of the Request

A Mediator's Report was sent to the parties on May 14, outlining the results of mediation. In this Report, it is noted that

> The Ministry also clarified that at the request stage, after consulting the appellant, it was agreed that parties who paid their fines following the request would be removed from the scope of the request. Accordingly, entries that appeared as being unpaid at the time of the request but that were paid following the request are deemed to be non-responsive to the request.

As is the usual practice, the parties were provided with an opportunity to comment on the accuracy of the Report. The appellant did not object to the above, but did request that section 23 (public interest override) be added to the issues in dispute. Accordingly, a Mediator's Report (Amended) was sent to the parties, which differed from the previous Report only in its inclusion of section 23.

The above discussion is necessary because, in his representations, the appellant alleges that he did not agree to narrow the scope of his request to exclude those parties that had paid fines following his original request. He states that "[p]erhaps I had become so numbed with this

process that I did agree to that, but as I recall, the fact that I learned midway into this process that a number of parties had paid fines following notification served to only anger me more…As I recall, discussion on this point caused me to point out that I was going to be obligated to submit an entirely new request just to deal with that segment of my request, which seemed even more ludicrous to me than the way this has progressed in the first place."

On my review of the matter, it appears that the appellant wishes to expand the scope of the appeal beyond that described in the Mediator's Report. It is important to note that the appellant had the opportunity to disagree with the contents of the Mediator's Report on this point, and did not. On the basis of the description of the issues in dispute in the Report, the inquiry proceeded. Representations were sought and obtained from the Ministry, and from affected parties. In the circumstances, I find that it is not available to the appellant to expand the scope of the issues before me. I am supported in this finding by the comments of former Adjudicator Laurel Cropley in Order PO-1755 on a similar issue:

> The appellant has essentially stated to me that he withdraws any agreements he made during mediation. In my view, it is too late to make such a claim at this stage in the process, particularly in light of the steps taken by the Mediator to clarify his concerns. In so finding, I am not saying that a party may not change his or her mind and back away from an agreement made in mediation, but that a decision must be made in a timely fashion and within the procedures which have been established by this office and which have been clearly communicated to the parties. To find otherwise would not only delay the inquiry process in that I would be required to essentially start the inquiry over again in order to introduce the new issues, but it would compromise the integrity of the appeals process itself by allowing a party to unilaterally frustrate the timely and orderly resolution of the appeal.

Therefore, I am satisfied that the information at issue in this appeal no longer includes entries that appeared as being unpaid at the time of the request but were paid following the request.

PERSONAL INFORMATION

In determining the issues in dispute, the first question to consider is whether the record contain personal information, as the section 21(1) personal privacy exemption applies only to information which qualifies as "personal information" as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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)].

It should be noted at the outset that there are two categories of affected parties whose information is found in the record: individuals and businesses.

The Ministry submits that the entries in the record related to identified individuals are clearly personal information relating to the quasi-criminal history of the individuals, and to financial transactions in which the individuals have been involved. In relation to the named businesses, the Ministry submits that information about a business is, as a general rule, not personal information. However, in some decisions, this office has held that in limited circumstances, there may be an exception to this general rule, where information about a business may in effect constitute information about an individual.

The Ministry submits that it was required to, and did provide notice to potentially affected businesses and third parties. It submits that as the release of the records, relating to business entities, *may* constitute an unjustified invasion of personal privacy, the Ministry was obligated by section 28 of the *Act* to provide notice to all of the business entities before granting access to the records. The Ministry states that while it attempted to provide notice to all businesses in the records, it was unable to provide notice to a number of them. Therefore, it states, some businesses could not be provided with an opportunity to submit representations to the Ministry concerning disclosure of their information, and it denied access under section 21(1) pertaining to these businesses.

It also denied access to information pertaining to businesses that did not respond to its notice. In some cases, the Ministry was advised that the notice did not reach the intended recipient as the business had moved with no forwarding address.

The Ministry submits that it had an obligation to deny access to the information for which no response was received or was undelivered by the courier or for which no address was available, as this information may be subject to the *Act*.

Individual affected parties

In Order PO-1986, former Adjudicator Dawn Maruno considered an appeal involving circumstances very similar to the ones before me. The appeal dealt with a request for information concerning unpaid fines imposed for convictions for offences under the *Environmental Protection Act* (*EPA*). In that case, as well, the record contained entries relating both to individual affected parties and business affected parties.

In finding that information about individual affected parties constituted "personal information" within the meaning of the *Act*, former Adjudicator Maruno stated:

> I am satisfied that the names of the individuals, together with the amounts of the fines and the dates they were imposed by the court constitute information "about" these individuals. In these circumstances, disclosure of this information would reveal the fact that these individuals were convicted of environmental offences, had fines imposed on them as a penalty, the amounts of those fines, and the dates on which the court imposed the fines. In addition, disclosure of the names would reveal the fact that the individuals have not paid the fines. Therefore, in the case

> of the individual affected parties, the three categories of information all qualify as "personal information" under section 2(1) of the *Act*.

In addition, it is important to note that the types of activities capable of giving rise to offences under the statutes and regulations in issue may be purely personal and private in nature, such as littering, or discharging sewage from a pleasure boat. I therefore find that the names of the individuals, together with the amounts of the fines, the nature of the infraction and the dates they were imposed by the court, constitute information "about" these individuals.

Business affected parties

Information is "personal information" for the purposes of the *Act* only if it relates to an identifiable individual. The information in the record about the business affected parties includes their business names and the amount of their outstanding fines. Although none of the businesses responding to the Notice of Inquiry made specific submissions about whether their information is "personal information" under the *Act*, one of them refers to its business as "family run" and submits that disclosure would be an invasion of privacy.

In Order 16, former Commissioner Sidney B. Linden discussed a similar issue:

> The use of the term "individual" in the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated associations or corporation, it could and would have used the appropriate language to make this clear. The types of information enumerated under subsection 2(1) of the *Act* as "personal information" when read in their entirety, lend further support to my conclusion that the term "personal information" relates only to natural persons.
>
> The records are restricted to information about the physical conditions in and around a "plant". In my view, they do not include information about an "identifiable individual" so as to bring them within the definition of "personal information" in subsection 2(1) of the Act.

In certain exceptional circumstances, information about a business entity has also been found to relate to an identifiable individual and, on the facts, has qualified as personal information. It must be emphasized that the cases in which this finding has been made are few and are dependent on the facts under consideration. In Order P-364, the record at issue contained detailed information about the finances of a cattle farm owned and operated by two identifiable individuals. In that case, Assistant Commissioner Tom Mitchinson stated that there was

> a sufficient nexus between the affected parties' personal finances and the contents of the report to properly consider the information contained in the record to be the personal information of the affected persons

In Order PO-1761, applying the same rationale, the detailed financial records of a company wholly owned by an identifiable deceased individual was also found to qualify as personal information.

However, in Order PO-1893, Adjudicator Donald Hale found that the names and addresses of individuals who hold mining leases through a corporate entity was not personal information:

> Records 2 and 3 contain information relating to corporations which hold mining and exploration leases in Ontario. In my view, information "about" a corporation cannot qualify as "personal information" within the meaning of section 2(1) as it is not "about" an identifiable individual. I adopt the reasoning first expressed by former Commissioner Linden in Order 16 to find that information about business entities such as the corporations listed in Records 2 and 3 does not qualify as information about an identifiable individual.
>
> I specifically find that although Record 2 may contain residential addresses which also serve as the addresses of the corporations which hold certain mining leases, this information does not qualify as "personal information" within the meaning of section 2(1)(d). I agree with the position taken by the Ministry above in this regard. Individuals who choose to organize their business affairs by incorporating and creating a new legal entity outside their personal one derive certain benefits from doing so. Individuals take advantage of the vehicle of a corporation for many different reasons, including the ability to limit their liability and to take advantage of certain taxation regimes which are available to corporation but not private individuals. In my view, by choosing to go the incorporation route, individuals relinquish a portion of their privacy rights with respect to some of the business affairs carried on by the corporate entity.
>
> For this reason, I find that the address information contained in Record 2 does not qualify as "personal information" within the meaning of section 2(1)(d). Similarly, the "contact" information contained in Record 3 cannot be said to be the personal information of the individuals listed therein. The names and telephone and fax numbers described in this document relate to these individuals not in their personal capacity, but rather, in their employment or professional capacity only. As such, following the reasoning expressed in a number of orders, including M-189 and P-369, I find that this information does not qualify as "personal information" within the meaning of section 2(1).

Similarly, in Order MO-1593, the notes of a meeting between an identifiable individual and municipal officials were found to relate exclusively to the individual's business activities, and did not qualify as personal information.

It is clear that for such exceptional circumstances to exist, there must be, at a minimum, an "identifiable individual". In the case of the records before me, the information of most of the

business affected parties does not identify any individual. The businesses are either numbered companies or use terms that do not refer to individuals. Accordingly, I am satisfied that information about these business affected parties does not qualify as "personal information" under the *Act*.

Further, even where the information about a business may identify a natural person (such as through the name of the business), the information in the records is not personal information as it is "about" the business rather than "about" the individual. The type of information reflected in these records is entirely dissimilar from the sort of information about the small businesses discussed in Orders P-364 and others, in which a "nexus" was found between individuals' personal finances and the financial information of their business.

I am supported in this finding by Order PO-1986 in which, as I have indicated, former Adjudicator Maruno considered very similar circumstances to the ones before me, and reached the same conclusion.

To conclude, I have found that the information in the records relating to business affected parties does not constitute personal information; the exemption at section 21(1) therefore cannot apply. The information relating to individual affected parties does qualify as personal information and I will turn to a discussion of whether it is exempt under section 21(1).

UNJUSTIFIED INVASION OF PERSONAL PRIVACY

If information sought by a requester is found to be personal information of another individual for the purposes of the *Act*, section 21(1) of the *Act* prohibits an institution from releasing that information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances, the only exception under section 21(1) which could apply is paragraph (f) which permits disclosure of personal information where the disclosure would not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide 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. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that if a presumption against disclosure has been established under section 21(3), it cannot be rebutted by any combination of the factors set out in section 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767]. However, a section 21(3) presumption can be overcome (1) if the personal information at issue falls under section 21(4) of the *Act*, or (2) if a finding is made under section 23 of the *Act* that a

compelling public interest exists in the disclosure of the personal information which clearly outweighs the purpose of the section 21 disclosure exemptions.

In its representations, the Ministry relies on the findings in PO-1986, and submits that the personal information contained in the records is captured by the presumption in section 21(3)(f) as describing an individual's finances, income, assets, liabilities, etc. If section 21(3) does not apply, the Ministry submits that the personal information is highly sensitive, and refers to section 21(2)(f).

The appellant submits that the list of individuals with unpaid fines is public information, not private. Most of his submissions are directed at the application of section 23 (public interest override), which I discuss below. He does not refer specifically to the presumptions in section 21(3), or the factors in section 21(2). The appellant points out that information that an individual has been charged with an environmental offence is public, as is information about the court case. These are matters which can be reported in the newspaper, along with the fact of a conviction and the amount of a fine. In these circumstances, the appellant submits that it makes no sense that information about whether the individual has paid the fine is not considered public information.

Findings

As in Order PO-1986, I find that the records provide information about unpaid fines owed by named individuals. These fines are liabilities of the individuals. The disclosure of liabilities is presumed to be an unjustified invasion of personal privacy under section 21(3)(f) of the *Act*. Accordingly, the information at issue fits squarely within the presumption.

The appellant's arguments about the public nature of environmental charges and court proceedings does not affect the applicability of the presumption under section 21(3)(f). As discussed in Order PO-1986 and in a number of previous orders, this office has found that personal information that may have been disclosed at one time as part of a public process is not necessarily considered "public" for all time under the *Act* (Orders 180, M-68, M-849, and M-1053). In Order MO-1378, Senior Adjudicator David Goodis found that even where photographs may have been disclosed in court proceedings open to the public, the section 14(3)(b) presumption under the municipal *Act* may still apply.

The appellant's arguments would be relevant if no presumption under section 21(3) were found to apply, and it was necessary to consider the factors in section 21(2) in order to determine whether disclosure of the information would constitute an unjustified invasion of personal privacy. In such a case, the fact of prior publication of the same or similar information might weigh against a finding that disclosure under the *Act* would be an unjustified invasion of personal privacy. However, as I have indicated, once a presumption is found to apply, it cannot be rebutted through a consideration of the factors listed in section 21(2) (or unlisted factors that may be relevant).

A presumption under section 21(3), however, does not stand in the way of disclosure if there is a compelling public interest which outweighs the purpose of the section 21(1) exemption and, below, I consider whether section 23 permits disclosure of the information.

In sum, I have found that section 21(1), together with section 21(3)(f), applies to exempt the information of the individual affected parties from disclosure. I have found that the information of the business affected parties is not personal information and does not qualify for exemption under section 21(1). I now turn to consider whether section 17(1) exempts the information of the business affected parties from disclosure.

THIRD PARTY INFORMATION

Section 17(1) of the *Act* provides:

> 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,
>
> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
>
> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Section 17(1) exists in recognition of the fact that in the course of carrying out public responsibilities, governmental agencies often find themselves in possession of information about the activities of private businesses. It has been described as designed to "protect the 'informational assets' of businesses or other organizations which provide information to government institutions" (see Order PO-1805).

Although one of the central purposes of the *Act* is to shed light on the operations of government, section 17(1) serves to limit disclosure of information which, while in the possession of government, constitutes confidential information of third parties which could be exploited by a competitor in the marketplace. In applying section 17(1), prior orders have sought to strike a

balance between the public policy in favour of public scrutiny of government activities, and third party economic interests.

In the appeal before me the Ministry does not take the position that section 17(1) applies, nor did it rely on section 17(1) in denying access to the records. Rather, the issue was raised by some of the business affected parties.

One of the preconditions for the application of section 17(1) is that the information in question was "supplied" by a third party. Only one of the affected parties addressed this issue in its submissions. This party submits that the amount of a fine owing was indirectly supplied to the Ministry, insofar as it was the result of a joint submission with the Crown based on information provided by the company.

I do not accept this submission. In Order PO-1986, former Adjudicator Maruno found that similar information was not "supplied" by the third parties, but was derived from court records, and I am satisfied that the same applies in this case.

Because of my finding that the information in the records was not "supplied" by third parties, it does not qualify for exemption under section 17(1).

Some of the affected parties have provided comments on the disclosure of their information, which I wish to address here. Some of the submissions point out that although a fine may remain "unpaid", this does not mean that it is in "arrears". It appears that some of the parties on the list have reached agreements with the Crown as to a payment schedule requiring payment in full at a future date, which has not yet arrived. Substantiating this is a column in the record that indicates due dates for payment, some of which are in the future. I draw the appellant's attention to this column, and to the comments of the affected parties.

In conclusion, section 17(1) does not apply to exempt the information in the records from disclosure.

PUBLIC INTEREST IN DISCLOSURE

Section 23 of the *Act* provides:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

Because I have found that section 17(1) does not exempt the records from disclosure, it is unnecessary for me to consider whether section 23 would have applied to permit disclosure despite section 17(1). I must consider, however, whether section 23 permits the disclosure of the information I have found exempt under section 21(1).

It has been established in a number of prior orders that section 23 applies only if two requirements are met. First, there must exist a *compelling* public interest in the disclosure of the record. Second, that public interest must *clearly* outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.), leave to appeal refused (January 20, 2000), Doc. 27191 (S.C.C.)].

It has been said that in order to find a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices (Order P-984, referred to in Order PO-1986).

The appellant submits that there is a compelling interest in making this information public. He states that publication of the information acts as a public deterrent to others. The appellant points to the fact that a number of businesses paid their outstanding fines after being told of his request. He submits that this shows that the possible threat of public exposure acted as a deterrent.

In Order PO-1986, former Adjudicator Maruno considered similar arguments, and found:

> The appellant submits that publishing the information in the record may deter individuals and businesses from polluting, pressure the convicted polluters into paying their fines, and pressure the government into enforcing the law.
>
> The appellant relies on a number of assumptions to conclude that disclosure of the names will deter future polluters and lead to a safer, cleaner environment. These assumptions include the publication of the names, widespread circulation of the information, general public outrage in reaction to the information, awareness by future polluters of the public opprobrium, and sufficient concern about such negative publicity to cause a change in behaviour. I find the link between publishing the names of polluters and deterring future polluters is too remote since it relies on a number of assumptions that may or may not be realized.
>
> The appellant also suggests that publication may pressure the polluters into paying their fines. This can happen only if the individual is able to pay. If the individual is impecunious or if for some other reason unable to pay, no amount of publicity will result in payment.
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> As the appellant has indicated, the Provincial Auditor of Ontario in his report has already revealed that the government has allowed over $10 million in environmental fines to remain in arrears. Since the aggregate amount of the outstanding fines has been made public, there is less interest in knowing what the

> individual fines are, and unlikely that this further publicity will change the government's attitude about delinquent fines.
>
> I am therefore not satisfied that disclosure of the names is reasonably likely to lead to the results suggested by the appellant.

While I agree with some of the comments of the former Adjudicator, some of the facts in this appeal are distinguishable from those before her. In the case before me, there is evidence supporting a conclusion that the threat of public disclosure led to the payment of some of the fines owing. While it is likely true that for some parties, no amount of publicity will lead to payment, it appears that it is also true that the threat of publicity has prompted the payment of fines on the part of others.

This effect should not be overstated. Some of the parties who paid their fines following the filing of the request by the appellant were not in arrears, and may simply have been making payments in accordance with a schedule agreed to previously. Nevertheless, it does appear that the request has had a discernable effect on the behaviour of some of the parties who were convicted of infractions under the legislation in question.

Based on these circumstances, I am prepared to accept that there is a compelling public interest in disclosure of the type of information in the records, to the extent that disclosure serves to encourage the payment of fines owing under environment protection and labour protection statutes, and acts as a general deterrent. It remains for me to consider whether this compelling public interest "clearly outweighs" the purpose of the section 21(1) personal privacy exemption. After consideration, I am not convinced that the compelling public interest served by disclosure clearly outweighs the purpose of section 21(1).

Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. Commenting generally on the personal privacy exemption under the Freedom of Information scheme, the drafters of Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980, vols. 2 and 3 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations which would generally be regarded as particularly sensitive, in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature ... the effect of the proposed exemption is to tip the scale in favour of non-disclosure". [See Order MO-1254]

I have found that the information of individual affected parties in the records is covered by the presumption in section 21(3)(f). In the spectrum of personal information, this type of information is considered by the *Act* as particularly sensitive. On the other side of the equation, the compelling public interest in disclosure is partially met by disclosure of the information of

the business affected parties, as well as other information already in the public domain (such as news reports at the time of the charges, information about the Provincial Auditor's findings). In considering all of these factors, I find that the compelling public interest to be served by the disclosure of the information of the individual affected parties does not clearly outweigh these parties' privacy interests under the *Act*.

NOTICE TO AFFECTED PARTIES

Before concluding, I wish to return to an issue raised by the representations of the Ministry relating to the notification of potential affected parties. As I have set out, in response to the request, the Ministry decided to provide notice under section 28 of the *Act* to certain businesses named in the records, on the basis that "the release of these records, relating to business entities, *may* constitute an unjustified invasion of personal privacy." [emphasis in original] The Ministry states that it provided this notice based on its understanding of IPC decisions:

> Information about a business is, as a general rule, not personal information. In some decisions, however, the IPC has held that, in limited circumstances, there may be an exception to this general rule; in these cases, information about a business may in effect constitute information about an individual. This is more likely to be the case for a business where there is a sole owner or proprietor, although this has not been the conclusion of the Information Privacy Commissioner in every instance.

The Ministry sent notices to most, but not all, of the businesses listed in the records. It did not have addresses for some of the businesses, although the Ministry made efforts to obtain that information. Some of the businesses responded to the notice. Some of the businesses provided no response. In some cases, the Ministry was advised that the notice did not reach the intended recipient as the business had moved with no forwarding address.

The Ministry states that it "had an obligation to deny access to the information for which no response was received or was undelivered by the courier or for which no address was available as this information may be subject to the *Act*."

The Ministry's position, in essence, appears to be unless a party that it has identified as a potentially affected party receives *actual* notice under section 28, the Ministry is unable to determine that an exemption does or does not apply, and it must by default exempt the information from disclosure. Further, the Ministry can only be satisfied that actual notice was received if a party provides it with a response.

It is not necessary for me to make any determinations about whether the Ministry's approach in these circumstances was valid. It has led to the curious result that the information of some businesses that objected to disclosure was disclosed, while the information of businesses that did not respond to the Ministry's notice at all was exempted from disclosure. Further, as a general matter, the Ministry's approach has the potential to provide a broader basis for exempting

information from disclosure than is actually mandated by the *Act*. For instance, it potentially exempts the information of a business that no longer exists, since such a business could not receive actual notice of a request.

As I have indicated, it is not necessary to make any findings about the Ministry's approach. I have set out the above history to the extent that the Ministry's position may raise a question about how I ought to deal with a similar set of circumstances in conducting this inquiry. In the course of this inquiry, this office provided a Notice of Inquiry to the businesses for which the Ministry provided an address. Where no address was provided, or where the Ministry indicated that delivery to the address was ineffective, attempts were made to obtain an accurate address. At the end of the day, 25 of 29 businesses whose information remained in issue were sent Notices; 4 responded and 3 envelopes were returned as undelivered.

Assistant Commissioner Tom Mitchinson considered a similar situation, in PO-1786-I, in which he stated:

> As a result of the unavailability of addresses for some affected persons, and the fact that a number of them for whom addresses were obtained appear to have moved, it has not been possible to notify all of the affected persons listed in the records. However, the vast majority have received Notice. For those who were not notified, reasonable efforts have been made to do so.

The Assistant Commissioner then went on to determine whether the claimed exemptions applied, on the basis of the evidence before him. On my review of the circumstances in this appeal, I was also satisfied that in the course of conducting the inquiry, reasonable efforts were made to notify the businesses that could be affected by disclosure. Those reasonable efforts having been made, there was no reason why I could not decide the issues before me, on their merits.

ORDER:

1. I order the Ministry to disclose the information in the record relating to businesses with unpaid fines, excluding those who have paid their fines subsequent to the date of the request, but including the party that has consented to disclosure. I uphold the Ministry's decision to withhold the information relating to unpaid fines owed by named individuals. For greater certainty, I have sent the Ministry a highlighted copy of the record, indicating the information to be withheld.

2. I order disclosure to be made by sending the appellant a copy of the information by November 13, 2003, but not before November 6, 2003.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the information disclosed to the appellant pursuant to this order.

Original signed by: October 16, 2003
Sherry Liang
Adjudicator