



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2232

Appeal PA-030046-1

Ministry of the Attorney General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

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 obtained under legislation administered by the Ministry of Labour. 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 name of businesses, individuals, corporations and municipalities that owe the fines, ii) the amount of the 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 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 has 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-030045-1 together, and sent a common Notice of Inquiry in the two appeals. I sent the Notice 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. I did not send the Notice at this stage to affected parties who appeared to be individuals (individual affected parties), but only those having business or corporate names (business affected parties).

I received representations from the Ministry and six of the businesses affected by this appeal. The Notices sent to five parties were returned as undeliverable. The Ministry's representations and those of one of the affected parties were then shared with the appellant. The appellant submitted representations in response.

After considering the issues raised by the appeal, I decided to issue an order in appeal PA-030045-1 only (Order PO-2190). I also decided to notify the individual affected parties of this appeal, and I sent a Supplementary Notice of Inquiry to these parties as well as to the Ministry, inviting them to make further representations on this appeal only. The Ministry made no further representations. I received representations from two individual affected parties, while eleven Notices were returned as undeliverable. I decided that it was not necessary to seek any further representations from the appellant.

RECORDS:

The record at issue is a nine-page document entitled "ICON Financial Subsystem, Detail Report on Outstanding MOL Fines". The document refers to convictions in the Burlington court from January 1, 1999 to December 11, 2002, under the *Employment Standards Act* (the *ESA*), the *Occupational Health & Safety Act* (the *OHSA*) and regulations under the *OHSA*. 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:

In the following discussion, I draw heavily from Order PO-2190. As described above, that appeal and this one were processed together for much of my inquiry. The facts are very similar and the Ministry and the appellant the same. Further, the Ministry and the appellant made representations for both appeals together. For this reason, I find it unnecessary to re-examine all the issues that were determined in Order PO-2190, preferring simply to adopt my previous findings where applicable.

PRELIMINARY ISSUE

Scope of the Request

In Order PO-2190, I discussed a preliminary issue about the scope of the request arising under Appeal No. PA-030045-1. Since the facts and submissions in this appeal are identical to those in Appeal No. PA-030045-1 on this issue, it is unnecessary to repeat that discussion here. I adopt the conclusion in Order PO-2190, and find 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 contains 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)].

Previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be "about the individual" within the meaning of section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621].

In Order PO-2225, Assistant Commissioner Mitchinson also considered the definition of "personal information", and the distinction between information about an individual acting in a personal capacity and information about an individual acting in a business capacity. In that order, the Assistant Commissioner posed two questions that help to illuminate this distinction:

Based on the principles expressed in these orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?

....

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

In Order PO-2225, the Assistant Commissioner found that an individual operating as a landlord was acting in the business arena, and information about that individual as a landlord constituted business and not personal information, in that "the landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate that he/she owns."

The representations of the Ministry on this issue have been set out in Order PO-2190.

The two individual affected parties that responded to the Supplementary Notice objected to the release of their information. One states that the information about him is personal and confidential, but neither makes further representations about the definition of "personal information" in the *Act*.

One of the business affected parties submits that although it is a corporation and not an individual, the information sought by the requester is personal information in that it relates to an identifiable individual. It submits that it is a small corporation wholly owned by one individual. Therefore, any information regarding unpaid fines provided to the requester will necessarily

reveal financial information relative to an identifiable individual. In effect, it is said, it will describe an aspect of the personal finances of the sole owner of the corporation.

Another of the business affected parties submits that as it is family owned, the information about the business should be considered personal information of the owners. Release of the information would have a negative impact on the company and in turn on the owners of the company.

Individual affected parties

In Order PO-2190, I considered whether information about individual affected parties was their “personal information”, stating:

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.

After consideration, I have decided that the analysis in Order PO-2190 applies equally to the information about individuals who owe fines as a result of convictions under the *ESA* and the *OHS*A and regulations. I am satisfied that the types of activities capable of giving rise to

offences under the statutes and regulations in issue may be personal in nature. The *ESA*, for instance, covers individuals who employ domestic workers or personal caregivers (see, for instance, the decisions in *Dolega-Kamienski Estate*, [2003] O.E.S.A.D. No. 72 and *Re Vojdani*, [1993] O.E.S.A.D. No. 110). In such a context, and where there is no evidence to suggest otherwise, it is not apparent that the individual employers are acting in the business arena in the sense discussed in Order PO-2225. The situation under the *OHSA* is less clear, but where an employer listed in the record at issue is an individual, and in the absence of any evidence otherwise, it is not again apparent whether their employment-related activities are part of a business.

I therefore find that the names of the individual affected parties, 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. In Order PO-2190, I found that where a business is either a numbered company or uses a name that does not refer to individuals, information about these business affected parties does not qualify as “personal information” under the *Act*. I analyzed this issue at length in that order, and I apply that analysis here.

Also in PO-2190, I found:

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 also adopt the above finding for the purposes of this appeal. In arriving at my conclusions here, I have also considered the submissions of the affected parties. In relation to the corporation wholly owned by one specific individual, I am not satisfied that the information in the records about this corporation is the “personal information” of that individual on the basis of sole ownership. I make the same finding in relation to the family-owned business. As indicated above, a finding that information about a business entity also relates to an identifiable individual requires the showing of a “nexus” between an individual’s personal finances and the financial information of their business at issue. I am not convinced that such a nexus has been established in this case.

In conclusion, I am satisfied 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.

The representations of the Ministry and the appellant are described in Order PO-2190. In that order, I found:

[T]he 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.

As in Order PO-2190, I find that the presumption in section 21(3)(f) applies to the information in the record in that it “describes” the liabilities of identifiable individuals. As the disclosure of the information is presumed to constitute an unjustified invasion of personal privacy, it is exempt 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.

As in Order PO-2190, 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.

One affected party expresses a concern about the negative inference that may be drawn if its name is released along with companies that have overdue fines. It may be useful to emphasize here that the request is for information about “unpaid” fines, which captures both fines that are “in arrears”, and those that remain unpaid in accordance with a payment schedule agreed to by the Crown. The information in the record distinguishes between these two situations, by the inclusion of the due date for payment, which ought to allay at least some of the concerns expressed.

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).

In Order PO-2190, I set out and discussed the submissions of the Ministry and of the appellant on this issue, and it is unnecessary to repeat all of that discussion here. The factual circumstances in that appeal and this one are similar. In Order PO-2190, I found that there was 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. However, after consideration, I was not convinced that the compelling public interest served by disclosure clearly outweighs the purpose of section 21(1). I adopt those findings and apply them here.

NOTICE TO AFFECTED PARTIES

Finally, in Order PO-2190, I discussed the efforts made to give notice to the affected parties, and their effect on the determination of the issues. I concluded in that order 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. I arrive at the same determination here.

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. 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 **February 27, 2004**, but not before **February 20, 2004**.

Original signed by: _____
Sherry Liang
Adjudicator

January 30, 2004