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

ORDER PO-2225

Appeal PA-020089-1

Ontario Rental Housing Tribunal

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BACKGROUND

The Ontario Rental Housing Tribunal (the Tribunal) is set up under the *Tenant Protection Act, 1997* (the *TPA*) and has exclusive jurisdiction to determine all applications under the *TPA* (section 157). During the course of its application proceedings, the Tribunal may require parties to pay money to the Tribunal on account of fees, fines or costs. If an applicant owes money to the Tribunal for any of these reasons, the Tribunal may refuse to allow the application to be heard or discontinue the application (section 182.1 of the *TPA* and Rule 29 of the Tribunal's *Rules of Practice and Procedure* under the *TPA* and the *Statutory Powers Procedure Act* (the *Rules*)).

The Tribunal generates two reports from its databases to identify individuals or corporations who owe money to the Tribunal. These reports are named:

- The Accounts Receivable Report
- The Outstanding Debt List

The Accounts Receivable Report is used by the Tribunal's Financial Officers to identify who owes a debt to the Tribunal. The Financial Officer flags the names of the debtors and the computer issues a warning to Tribunal staff if a debtor attempts to file a new application with the Tribunal.

Because there are some instances where the computer does not accurately identify a debtor, Tribunal staff use the Outstanding Debt List to verify and confirm whether an applicant owes money to the Tribunal.

NATURE OF THE APPEAL:

The Tribunal received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the accounts receivable report, and the regional reports for each region and neighbouring offices. Specifically, the requester asked for the first name, last name, phone number, postal code and address of any applicant who owed money to the Tribunal as a result of failure to pay the fee, administrative fine or any Tribunal ordered costs, together with the amount owing. The requester noted that the accounts receivable report was produced every week and that the regional report was done every two weeks, and the requester asked that these reports be made available on a regular basis.

The Tribunal identified the Accounts Receivable Report and the Outstanding Debt List as the two responsive records and relied on section 21 (invasion of privacy) of the *Act* as the basis for denying access to both records.

The requester, now the appellant, appealed the Tribunal's decision.

During mediation, a number of things occurred:

- The appellant clarified that she was seeking access to information relating to landlords only. Therefore, the parts of the records containing information relating to tenants are no longer at issue.

- The Tribunal agreed to disclose the information relating to corporate landlords. As a result, the only information remaining at issue in the appeal is that relating to non-corporate landlords. The appellant has already received the information relating to the corporate landlords.

- The appellant agreed to limit her request to the actual records identified by the Tribunal in this appeal, and to submit a new request for continuing access to these records, pending the outcome of this appeal.

- The appellant raised the possible application of the "public interest override" at section 23 of the *Act*.

Further mediation was not successful, so the file was transferred to the adjudication stage of the appeal process. I sent a Notice of Inquiry initially to the Tribunal, which provided me with representations. I then sent a Notice, along with the Tribunal's representations, to the appellant, who also submitted representations. The appellant's representations were then shared with the Tribunal, which provided reply representations.

I also sent the Notice to 29 individuals who are identified in the records and whose interests might be affected by the outcome of the appeal (the affected persons). Three affected persons responded, all of whom objected to disclosure on the basis that the information is their "personal information".

RECORDS:

The records that remain at issue in this appeal are the undisclosed portions of the Accounts Receivable Report and the Outstanding Debt List containing information relating to non-corporate landlords. The portions containing information about tenants have been removed from the scope of the appeal, and the appellant has already been provided with the portions containing information relating to corporate landlords.

The appellant, in her representations, indicates that she has further narrowed the scope of her request to include only the names of non-corporate landlords owing money to the Tribunal, and not their addresses.

DISCUSSION:

PERSONAL INFORMATION

The section 21 personal privacy exemption applies only to information that 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.

Representations

The appellant and the Tribunal disagree as to whether the names of non-corporate landlords who owe debts to the Tribunal constitute "information about an identifiable individual", as required in order to fall within the scope of the definition of "personal information".

The Tribunal submits:

> The information requested includes names of individuals [and other information that is no longer at issue in this appeal]. Those identifiers are linked in the reports to other personal information related to the individuals (information related to financial transactions to which these individuals have been involved). The Tribunal submits that this information clearly meets the definition in section 2(1).
>
> In Order PO-1986, similar information was found by the adjudicator to meet the definition of personal information. That order dealt with a request for information (including the names and addresses and amounts owing, etc) of individuals and businesses that owed fines under the *Environmental Protection Act*. The adjudicator in that order was "satisfied that the names of the individuals, together with the amounts of the fines…constitute information 'about' these individuals."
>
> The Notice of Inquiry asks the Tribunal to provide submissions on whether information subject to this appeal qualifies as personal information, having regard to the distinction between information that is about an individual and information that, while it may name an individual, relates to them in their professional or official government capacity.
>
> Order P-1621 discussed a distinction between the following situations:
>
> - disclosing an individual's name where the disclosure would reveal other personal information "relating to an individual"; and
>
> - disclosing an individual's name where the disclosure would reveal information that is not "personal" in the sense that it is not "about" that person.

> In the second situation, the disclosed information relates to the organization which the individual represents, or to the corporation or Government office which employs the individual. The Tribunal submits that disclosing the names of individual landlords who owe debts to the Tribunal reveals personal information that is "about" those landlords as individuals, not about a corporation or an organization.

The Tribunal makes reference to a number of orders involving individuals who were acting in a professional or official government capacity, and submits:

> In all these cases, the affected individuals were clearly acting in their capacities as employees or as representatives or spokespersons of organizations, which is not the case for the non-corporate landlords who are identified in the reports.
>
> Also, the landlords who would be affected by disclosure are not "professionals" in the sense that appears to be intended in the Notice of Inquiry. The affected landlords are merely individuals who happen to own property which they rent to tenants. When they fail to pay an amount owing to the Tribunal, they are acting (or failing to act) in a "personal capacity", not in a "professional capacity". The debt that results is a personal debt, not one owed by a corporation or an organization.
>
> The Tribunal submits that, in light of the issues discussed above, the information subject to this appeal qualifies as "personal information".

The appellant argues that the information at issue relates to an individual in their business capacity and should not be considered personal information. The appellant submits:

> Specifically, it is our position that:
>
> (i) the names of the landlords are not personal information because they relate to an identifiable individual in his/her business capacity only; and
>
> (ii) the debt information is not personal "financial transaction" information because it is *about* a business debt, and not *about* the individual
>
> The information at issue relates entirely to debts owed by landlords to the ORHT in the nature of fines, fee or costs. The records contain the landlord's name [and other information that is no longer at issue in this appeal]. The debts have in each case arisen out of applications before the ORHT under the *TPA*. ORHT Workload Reports establish that the landlord will have been the applicant in the vast majority of applications which have given rise to the outstanding debt, but whether as an applicant or a respondent, in each instance the debt at issue is a business debt arising out of the individual's business as a landlord in the residential tenancies market.

The appellant referred to a number of orders in support of her contention and suggests that in the present appeal it is clear that the individuals listed are acting in a business capacity. The appellant submits:

> Given that the record arises out of a *TPA* application, it is clear that, in this very instance, the listed individual is operating a business as a landlord of residential rental property.

The appellant also draws a distinction between those orders that support her position and Order MO-1562. The appellant states:

> In that case Adjudicator Cropley considered a request for information concerning an identified municipal property. The parties in the appeal were in agreement that the name of the requester (an owner of the property) was *not* personal information, but the adjudicator nonetheless reviewed this issue in her reasons. In concluding that there was insufficient evidence to determine if the requester was acting in a personal or business capacity, the Adjudicator wrote:
>
> > Looking at this issue independently and as an outsider, it is not immediately apparent to me whether or not the appellant is acting in a personal or professional capacity in this litigation with the City. The records relate to the appellant's actions in obtaining a lodging house license at the specified property and renovations made to the premises…
> >
> > It may be that the appellant is operating a business of purchasing properties and turning them into rental accommodation. On the other hand, it is equally possible that this might have been the one-time investment project of an individual. The majority of records do not provide any insight on this issue…given the nature of this record and the purpose for which it was written, I am not prepared to conclude that it provides solid evidence in support of a finding that the records relate to the appellant in his professional or business capacity.
>
> Order MO-1562 supports our appeal in relying on the distinction between personal and business capacity. The Adjudicator finds that the records before her do not provide clear "insight on this issue". As noted above, in our case, it is readily apparent from the nature of the records at issue that the identifying information relates to the individuals in their business capacity as landlords of rental residential property.
>
> There is one aspect of Order MO-1562 that may be inconsistent with the approach that we are urging [the Commissioner's Office] to follow in this appeal. If Adjudicator Cropley is suggesting that the distinction between a personal and

> business capacity can depend on whether or not there is more than one property involved, then we would disagree with that interpretation. The question of whether an individual is acting in a personal or business cannot depend on the size of a "project" (as she phrases it) but must depend on the nature of the project or of the entity concerned. A landlord of even a single residential unit is properly considered to be a business entity for the purposes of deciding whether the records in this appeal contain personal information under section 2(1).

The appellant also addresses Order PO-1986, the decision that found that names of individuals owing fines for offences under the *Environmental Protection Act (EPA)* were personal information. The appellant submits the following comments about Order PO-1986:

> The Tribunal relies on this decision as support for the non-disclosure of the names of landlords. It appears to us, from a review of the decision, that this order in fact supports the disclosure of the records at issue. The decision held that identifying information about "business affected parties" was not personal information and was not exempt from disclosure.

At the conclusion of her representations, the appellant states that the records released to date from the Accounts Receivable Report demonstrate that the information with respect to all but 6 of the 75 listed landlords is recorded under their individual name. From this information they note that most listings are under individuals' names and submit that despite this fact it may well be that corporations hold many of the properties and businesses. The appellant submits that due to the definition of landlord in the *TPA*, it is unnecessary for a corporate landlord to use the name of their incorporated business, or sole proprietorship or partnership, in their appearances before the Tribunal.

The affected persons who were contacted all appear to contend that the information included in the record is their "personal information". However, they do not provide any further representations on that issue.

Analysis

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 a professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" (Orders P-257, P-427, P-1412, P-1621). While many of these orders deal with individuals acting as employees or representatives of organizations (Orders 80, P-257, P427, P-1412), other orders have described the distinction more generally as one between individuals acting in a personal or business capacity:

- In Order M-118, former Commissioner Tom Wright ordered the partial disclosure of mailing lists compiled by the City of Toronto that included the names and addresses of individuals who had expressed an interest in certain municipal

properties. Commissioner Wright distinguished between the personal or business capacity of the named individual. The distinction did not turn on whether or not the name as it appeared on the list was that of an individual, but rather on whether there was evidence indicating that the individual was acting in a personal or business capacity.

- In Order M-454, former Adjudicator John Higgins found that the name of the owner of a dog kennel, and an address that was both the business and residential address of that owner was not personal information but "information [that] relates to the ordinary operation of the business".

- Order P-710 dealt with records that contained the names of individuals and corporations who were vendors of goods and services to the Liquor Control Board of Ontario. Adjudicator Donald Hale found that the names of individuals should be disclosed as the identifying information related to "the business activities of these individuals" and as such did not qualify as their personal information.

- In Order P-729, former Adjudicator Anita Fineberg found that the amount of financial assistance received from the Ontario Film Development Corporation received by a named individual applicant (as opposed to a corporation, sole proprietorship or partnership) related to the business activities of that individual and could not be characterized as personal information.

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? In my view, when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena. The landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate that he/she owns. Income and expenses incurred by a landlord are accounted for under specific provisions of the *Income Tax Act* and, in my view, the time, effort and resources invested by an individual in this context fall outside the personal sphere and within the scope of profit-motivated business activity.

I recognize that in some cases a landlord's business is no more sophisticated than, for example, an individual homeowner renting out a basement apartment, and I accept that there are differences between the individual homeowner and a large corporation that owns a number of apartment buildings. However, fundamentally, both the large corporation and the individual homeowner can be said to be operating in the same "business arena", albeit on a different scale. In this regard, I concur with the appellant's interpretation of Order PO-1562 that the distinction between a personal and a business capacity does not depend on the size of a particular undertaking. It is also significant to note that the *TPA* requires all landlords, large and small, to follow essentially the same set of rules. In my view, it is reasonable to characterize even small-scale, individual landlords as people who have made a conscious decision to enter into a business

realm. As such, it necessarily follows that a landlord renting premises to a tenant is operating in a context that is inherently of a business nature and not personal.

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?

As far as the information at issue in this appeal is concerned, disclosing it would reveal that the individual:

1. is a landlord;

2. has been required by the Tribunal to pay money to the Tribunal in respect of a fine, fee or costs;

3. has not paid the full amount owing to the Tribunal;

4. may be precluded from proceeding with an application under the *TPA*.

In my view, there is nothing present here that would allow the information to "cross over" into the "personal information" realm. The fact that an individual is a landlord speaks to a business not a personal arrangement. As far as the second point is concerned, the information at issue does not reveal precisely why the individual owes money to the Tribunal, and the mere fact that the individual may be personally liable for the debt is not, in my view, personal, since the debt arises in a business, non-personal context. The fact that monies owed have not been fully paid is also, in my view, not sufficient to bring what is essentially a business debt into the personal realm, nor is the fact that a landlord may be prohibited by statute from commencing an application under the *TPA*.

I also find that Order PO-1986, relied on by the Tribunal, can be distinguished on its facts. The information at issue in that case was a list of individuals charged, convicted and fined for offences under section 186 of the *Environmental Protection Act* (*EPA*), who had not paid the fines. Under the *EPA*, individuals may be charged for offences that are committed in a purely personal capacity. For example, an individual property owner who dumps a toxic substance into a river can be convicted of an offence under sections 6 and 186 of the *EPA*. Similarly, an individual who litters can be convicted of an offence under sections 86 and 186 of the *EPA*. In both instances, offences can occur outside a business context. Therefore, Order PO-1986 is distinguishable because it would not be reasonable to conclude that individual names on the unpaid environmental fines list appear in an inherently business context.

Having carefully considered the representations from both parties, and for all of the reasons outlined above, I conclude that the information at issue in this appeal - the names of non-corporate landlords - is "about" those individuals in a business rather than a personal capacity, and does not qualify as "personal information" as that term is defined in section 2(1) of the *Act*.

Because the section 21 exemption can only apply to "personal information", this exemption has no application in the circumstances of this appeal, and the information at issue must be disclosed to the appellant.

As noted earlier, during the course of this appeal the appellant narrowed the scope of her request to include only the names of non-corporate landlords that appear on the particular Accounts Receivable Reports and the Outstanding Debt Lists covered by the scope of her request. As a result, other information about these individuals contained in the records is not before me in this inquiry, nor is the issue of whether the appellant should be given continuing access to similar information in future. That being said, it may nevertheless be helpful to observe that because the names of the non-corporate landlords in these records do not qualify as "personal information", other information about them or other similar landlords that is compiled in the same business context could also fall outside the scope of the definition of "personal information" for the same reasons, unless it is established that disclosing such other information would reveal something of a personal nature about a non-corporate landlord.

As regards notification of landlords in requests for this type of information, I am satisfied that this would not be required despite the decision of the Divisional Court in *Ontario (Attorney General) v. Fineberg and Doe* (1996), 88 O.A.C. 318 (Div. Ct.). In that case, the Court quashed a decision that a record did not include personal information because the individual had not been notified where the information in question concerned payment for legal services provided to him in a private defamation lawsuit against him. In my view, that decision is clearly distinguishable because the context is so significantly different. Given the inherent business context of the information appearing in the two types of records at issue in this appeal, I have concluded that, although I did in fact notify the non-corporate landlords in this appeal, it was not strictly necessary for me to have done so before finding that no "personal information" was contained in the records.

ORDER:

1. I order the Tribunal to disclose the names of the non-corporate landlords listed in the records to the appellant no later than **February 16, 2004**, but not earlier than **February 9, 2004**.

2. In order to verify compliance with this order, I reserve the right to require the Tribunal to provide me with a copy of the material disclosed to the appellant in accordance with provision 1 of this order.

Original signed by: January 12, 2004
Tom Mitchinson
Assistant Commissioner