ORDER PO-2266

Appeal PA-030135-1

Ontario Rental Housing Tribunal

BACKGROUND

In Order PO-2109, I reviewed a decision issued by the Ontario Rental Housing Tribunal (the Tribunal) in response to a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the production of a weekly list consisting of "… all names, addresses, hearing dates and the location of the hearing of tenants whose landlords, in the future, file an application to evict with the Tribunal."

During the course of that appeal, it was brought to my attention that the Tribunal had a practice of disclosing "custom reports" to commercial clients outside of the *Act*. The reports were frequently disclosed under terms outlined in Memoranda of Understanding between the Tribunal and the individual requesters but were also disclosed in response to individual requests for select information contained in various application files. These reports were provided to a number of requesters on a regular basis.

The reports that I reviewed during the course of that previous appeal appeared to contain the personal information of individuals (names, addresses, dates and locations of eviction proceedings) other than the requesters. After conducting an inquiry, I found that the information at issue qualified as "personal information" as that term is defined in section 2(1) of the *Act*, and that none of the exceptions to the mandatory section 21 exemption dealing with this type of information were present. Therefore, I required the Tribunal to withhold access. As a postscript to Order PO-2109, I stated that agreements of that nature "cannot take precedence over the *Act* in circumstances where the personal information at issue qualifies under the mandatory section 21 exemption claim." I urged the Tribunal to review its policy of providing personal information of tenants and to take whatever steps were required to ensure that any such disclosure is made in accordance with the *Act*.

In response to Order PO-2109, the Tribunal rescinded its outstanding Memoranda of Understanding for "custom reports" and denied subsequent requests under the *Act* for information contained in Tribunal application files.

NATURE OF THE APPEAL:

The Tribunal received a request under the *Act* for information that the requester proposed might form the basis of a new Memorandum of Understanding (MOU) between the requester and the Tribunal. The proposed MOU was to have all the same terms, timetables, and conditions of a previous MOU between the parties and provide for continued and regular access to the following information:

- application file number
- date the application was filed
- address of the rental unit which the application applies, including unit number, street address, city, postal code
- date and time of the application hearing
- location of the application hearing

The Tribunal identified the responsive records and denied access to all of the information in accordance with section 21 of the *Act* (invasion of privacy). In its decision letter the Tribunal stated:

> In light of Order PO-2109, issued by the [IPC], I believe the information is personal under [the *Act*], even without the names and telephone numbers. The information still includes the addresses of the tenants, and addresses are considered personal information under clause 2(1)(a) of [the *Act*]. These addresses still allow you to contact tenants at their homes, even without their names (for example, by addressing a letter to the "occupant"). Given that this contact would be initiated based on your knowledge that they are subject to applications to terminate their tenancies', I believe contacting them in that manner would constitute an unjustified invasion of personal privacy pursuant to section 21 of [the *Act*].

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

During mediation, the appellant clarified that he is seeking access to information contained in all landlord and tenant applications for all districts, regions, and areas served by the Tribunal. The appellant also clarified during mediation that by "all applications" he is referring to:

- Above Guideline Increase (AGI) applications
- Eviction applications (including all the sub-categories)
- Reduction of Rent applications
- Tenant's Rights applications
- Maintenance Rights applications

I initiated my inquiry by sending a Notice of Inquiry to the appellant setting out the issues and seeking representations. The appellant responded with representations. I then asked for and received documentation from the Tribunal on the processes and practices relating to the collection, use and disclosure of file related information.

RECORDS:

The record at issue in this appeal is a custom report compiled from information contained on all active landlord and tenant applications received by the Tribunal. I have reviewed samples of reports previously disclosed by the Tribunal in response to a similar request by the appellant. The Tribunal has also provided me with samples of their application forms. While the application forms contain the names of tenants that are parties to the applications, as well as detailed information surrounding the applications themselves, the information requested by the appellant is limited to the following:

- Case/file number

- Address of the unit affected by the application including unit number
- Date that the application was filed
- Date, time and location of the hearing

The request does not include tenant names.

DISCUSSION:

PERSONAL INFORMATION

General principles

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, as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> …
>
> (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;

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in their professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

In addition, to qualify as personal information, it must be reasonable to expect that an individual may be identified from the information [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Appellant's representations

The appellant submits that the information at issue in this appeal is distinguishable from the information covered by Order PO-2109:

> … The Appellant in [Order PO-2109] was requesting information about specific identifiable persons, that being "tenants whose landlord's had filed for eviction."
>
> In [this current appeal], the Appellant does not request information about any specific identifiable person. Instead, the request …, requests information pertaining to "the property", a property which is a business address, and any litigation which may effect the property.
>
> The Appellant in this matter takes the position that landlords are in the business of renting residential premises. They conduct this business in an ongoing manner on a monthly basis by executing a payment of funds tendered by the tenant for the right to occupy the specific premise.

The appellant refers to section 1 of the *Tenant Protection Act* (the *TPA*), which defines the terms "rent", "rental unit", "landlord", and "tenant", and submits that those terms "describe a business relationship with regular transactions in exchange for the right to occupy the specific rental unit". The appellant argues that his position is supported by the fact that the landlord advertises the address of the rental unit in order to find and secure tenants. He also points to Order M-454, which, in the appellant's view, makes it clear "that there can be no expectation of privacy with respect to a business address".

Findings

Case/file number

The definition of "personal information" includes "any identifying number" assigned to an identifiable individual [paragraph (c)].

The appellant's request includes the case/file number for all active Tribunal applications. The Tribunal explains that when an application is initially scanned into their computer database, the system automatically assigns an application number for the file. The Tribunal has confirmed that only parties to an application have access to information from the file. I have been provided with a copy of the Tribunal's Call Centre and Counter Policies Issue #13 which details how Tribunal staff should respond to requests from clients to access files. That policy states:

> Staff should not provide information about Tribunal applications to non-parties, even if they know the file number. Staff should tell the client they can request the information under [the *Act*].

The file number itself is not referable to an individual. Given the Tribunal's policy, I am satisfied that the file associated with a file number is not accessible to anyone other than a party to the application. Accordingly, there is no reasonable expectation that an individual can be identified from the file number, and the number cannot be considered an identifying number assigned to an individual. Therefore, the number does not qualify as "personal information", and it should be provided to the appellant.

Address

"Personal information" also includes the address of an identifiable individual [paragraph (d)].

The address information included in the record includes unit number, street address, city and postal code.

In its decision letter, the Tribunal outlines its position that the address, even without the tenant names and telephone numbers, would constitute the tenants' "personal information":

> The information still includes the addresses of the parties, and addresses are considered personal information under clause 2(1) of [the *Act*]. These addresses still allow you to contact tenants at their homes, even without their names (for example, by addressing a letter to the "occupant"). Given that this contact would be initiated based on your knowledge that they are subject to applications to terminate their tenancies, I believe contacting them in that manner would constitute an unjustified invasion of personal privacy pursuant to section 21 of [the *Act*].

It is well established that an individual's address qualifies as "personal information" under paragraph (d) of section 2(1) of the *Act*, as long as the individual residing at the address is identifiable. However, previous orders have found that if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act*. For example, in Order PO-2191, Adjudicator Frank DeVries found that an address contained on an occurrence report for a motor vehicle collision was not "personal information". He determined that the address was simply a reference point used by the Police to identify where the collision took place, and that there was no indication that the address was referable to an identifiable individual or that any individual at that address was in any way involved in the incident.

In this appeal, the appellant is seeking the street address, city, postal code and specific unit number that is subject to an application under the *TPA*. In my view, if all of this address-related information is disclosed, it is reasonable to expect that the individual tenant residing in the specified unit can be identified. Directories or mailboxes posted in apartment buildings routinely list tenants by unit number, and reverse directories and other tools are also widely available to search and identify residents of a particular unit in a building if the full address is known. Accordingly, I find that the full addresses of units subject to Tribunal applications consist of the

"personal information" of tenants residing in those units, as contemplated by paragraph (d) of the definition.

That being said, if unit numbers are removed, I find that the street address, city and postal code on their own do not provide sufficient information to reasonably identify a specific resident of a unit within a residential rental accommodation. The vast majority of rental units in the province are contained in multi-unit buildings and, in the absence of any other associated field of information that would itself constitute a tenant's "personal information", disclosing address-related information with the unit number removed would render identifiable information non-identifiable, thereby removing it from the scope of the definition of "personal information". Accordingly, the address-related information, with unit numbers severed, should be provided to the appellant.

Name of landlord/tenant

"Personal information" also includes an 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)].

The name of a tenant, when included on a Tribunal eviction application form, clearly reveals information "about an identifiable individual", specifically that the named person is the subject of a dispute with his/her landlord. As such, the name of the tenant in this context falls within the scope of the definition of "personal information". The appellant in this case would appear to acknowledge this, and is not seeking access to the names of tenants.

It would appear that the appellant is seeking access to the names of landlords as they appear on the various Tribunal application forms.

As indicated above, to qualify as personal information, the information must be about the individual in a personal capacity.

I recently dealt with an appeal involving the Tribunal and an appellant who sought access to the names of landlords owing money to the Tribunal. The Tribunal was prepared to disclose the names of corporate landlords, but took the position that the names of non-corporate landlords constituted their "personal information" and qualified for exemption under section 21 of the *Act*. I disagreed, and the rationale for my decision is outlined in Order PO-2225:

> [T]he 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 [*Tenant Protection Act*] 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*.

The reasoning in Order PO-2225 is equally applicable to the names of the landlords appearing on the various forms in this appeal. I find that this is information "about" the landlords 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*.

Accordingly, the names of the landlords should be provided to the appellant.

Other information

The other requested information consists of the application filing date and the date, location, and time of the hearing.

Clearly, none of this information itself qualifies as "personal information" and, in light of the Tribunal's policy regarding access to application file documentation, I am satisfied that there is no reasonable expectation that an individual can be identified from the disclosure of the application filing date as well as the date, location and time of hearing of active applications before the Tribunal.

Conclusion

I find that the only information requested by the appellant that falls within the scope of the definition of "personal information" in section 2(1) is the unit number component of the address listed on the various Tribunal application forms. Because only "personal information" can qualify for exemption under section 21(1) of the *Act*, the case/file number, street address, city, postal code, landlord's name, application filing date, and date, time and location of hearing does not qualify for exemption and should be disclosed to the appellant.

PERSONAL PRIVACY

General Principals

The only category of information I will consider under the personal privacy exemption is the unit number component of the address information contained on the various Tribunal application forms.

Where records contain the personal information of individuals other than the appellant, section 21(1) of the *Act* prohibits the Tribunal from releasing this information unless one of the

exceptions in paragraphs (a) through (f) of section 21(1) applies. The appellant submits that sections 21(1)(c), (d) and (f) apply in this case. Those sections read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (c) personal information collected and maintained for the purpose of creating a record available to the general public;
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(1)(c) and (d): public record/disclosure under another Act

Introduction

The appellant takes the position that certain provisions in the *Statutory Powers Procedure Act* (the *SPPA*) and the *TPA* are relevant considerations under section 21(1)(c) and (d), and that I failed to properly consider the impact of these statutory provisions in Order PO-2109.

First, the appellant submits that section 174 of the *TPA* and section 5 of the *SPPA* are relevant because both sections specifically identify the parties in the proceedings. Section 5 of the *SPPA* provides a general definition of parties to a proceeding governed by that statute and section 174 of the *TPA* defines the parties to an application before the Tribunal.

Second, the appellant points to sections 9 and 20 of the *SPPA*. Section 20 directs the Tribunal to compile a record of the proceedings and section 9 stipulates that, subject to certain listed exceptions, hearings are to be open to the public. The appellant submits that, read together, these sections indicate that "it is the intent of the legislation that the proceedings be recorded and public".

Third, the appellant submits that section 24 of the *SPPA* "is relevant because it gives the authority of the Tribunal to give notice of the proceedings, as well as its decision by public advertisement".

Applying his arguments to the specific exceptions in section 21(1)(c) and (d), the appellant submits that sections 5, 9, 20, 24 of the *SPPA* along with section 174 of the *TPA* give the Tribunal the authority to make the information available to the public.

Section 21(1)(c): public record

In Order PO-2109, I reviewed the Tribunal's decision in response to a request for the production of a weekly list detailing the names, addresses, hearing dates and the location of the hearing of all tenants whose landlords, in the future, file an application to evict with the Tribunal. In that order I reviewed the relevant previous orders and privacy investigations reports dealing with sections 21(1)(c) and 37 of the *Act* and found that it is clear from that line of orders and investigations reports that, for the exemption in section 21(1)(c) to apply, the personal information at issue must be "collected and maintained **specifically** for the purpose of creating a record available to the general public". If the information is collected and maintained for purposes other than the specific purpose of making records available to the public, then section 21(1)(c) does not apply (P-318, M-170, M-527, M-849, PO-1786-I).

In Order PO-2109 I stated:

> In my view, ORHT [the Tribunal] does not collect and maintain the personal information that would be responsive to the appellant's request specifically for the purpose of creating a record available to the public. Rather the information about tenants who are alleged to be in arrears of rent is collected and maintained by the ORHT for the purpose of the hearing that will consider the allegation and make a determination under the authority provided to ORHT under the *Tenant Protection Act*. The fact that hearings are held in public and that the procedures followed by the ORHT are governed by the *Statutory Powers Procedure Act* means that relevant personal information of tenants in the context of hearings is not kept confidential, and the notice under section 29(2) of the *Act* contained on the bottom of the various ORHT forms makes it clear that once the personal information is provided it "may become available to the public". However it does not necessarily follow that this personal information is freely and broadly available to the public generally outside the context of these proceedings, particularly in bulk and in electronic format. The section 39(2) notice provisions also do not constitute consent for any subsequent disclosure of personal information, which is made obvious by the fact that some forms would appear to collect personal information about tenants from landlords rather than from tenants directly.
>
> In my view, the situation in this appeal is similar to the one I faced in Order M-849. I found in that case that the arrest sheet records were created for the purpose of prosecuting a crime and, although made available to the public on an individual record basis, they were not collected and maintained **specifically** for that purpose. Similarly here, the personal information on the various ORHT forms is collected by the ORHT from the landlord or tenant filing the form for the purpose of adjudicating disputes under the *Tenant Protection Act*. Although information may become available to the public in the context of hearings, in my view, this is a necessary consequence or outcome of the adjudicative process, and it does not

> necessarily follow that the personal information was collected and maintained **specifically** for the purpose of making this information publicly available.

The record at issue in this appeal is substantially similar to the record at issue in Order PO-2109, and I find that the same reasoning from the previous order applies here. The fact that hearings are held in public and that the procedures followed by the Tribunal are governed by the *SPPA* means that relevant personal information of tenants in the context of hearings is not kept confidential. However, it does not necessarily follow that this personal information in its recorded form is freely and broadly available to the public generally outside the context of these hearings. The specific statutory provisions under the *SPPA* and the *TPA* referred to by the appellant deal with the rights and obligations as they relate to parties to a proceeding before the Tribunal, and do not assist the appellant in distinguishing the case from Order PO-2019.

Accordingly, I find that the exception in section 21(1)(c) has not been established.

Section 21(1)(d): disclosure under another Act

In Order M-292, Adjudicator Anita Fineberg determined that the phrase "expressly authorizes" found in section 21(1)(d) should be interpreted in a manner consistent with the way the phrase has been interpreted in the context of section 38(2) of the *Act*. Adjudicator Fineberg relied on the comments made in Investigation Report I90-29P, which stated:

> The phrase "expressly authorized by statute" in subsection 38(2) of the *Act* requires either that specific types of personal information be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute i.e. in a form or in the text of the regulation.

I followed similar reasoning in Order PO-1815.

The appellant argues that section 24 of the *SPPA* expressly authorize the disclosure of the records. This section reads:

> 24. (1)Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,
>
> (a) to give notice of the hearing; or
>
> (b) to send its decision and the material mentioned in section 18,
>
> to all or any of the parties individually, the tribunal may, instead of doing so, cause reasonable notice of the hearing or of its decision to be given to such parties by public advertisement or otherwise as the tribunal may direct.

> Contents of notice
>
> (2) A notice of a decision given by a tribunal under clause (1) (b) shall inform the parties of the place where copies of the decision and the reasons therefor, if reasons were given, may be obtained.

I do not accept the appellant's position. Section 24 of the *SPPA* does not *expressly describe* the specific type of personal information at issue in this appeal, that being the unit number of residences occupied by tenants who are the subject of various Tribunal applications; nor does it include *specific reference* to a regulatory authority that would identify any such personal information. Section 24 of the *SPPA* gives tribunals discretion to implement alternative notice procedures for hearings and decisions where practical constraints are present, and applies only to parties to proceedings. Clearly, the appellant is not a party to proceedings in which the unit number of a residence contained on an application form relates, and section 24 of the *SPPA* does not expressly authorize disclosure of this personal information in the context of this appeal.

Accordingly, I find that the *SPPA* as a whole, and specifically section 24 relied on by the appellant in this case, does not expressly authorize the disclosure of the unit numbers at issue in this appeal, and the exception in section 21(1)(d) has not been established.

Section 21(1)(f) and the factors listed under section 21(2)

Introduction

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosing personal information would result in an unjustified invasion of privacy under section 21(1)(f). Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; section 21(4) lists exceptions to these presumptions; and section 21(2) provides some criteria for an institution to consider in deciding if an unjustified invasion would occur. 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 21(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

Sections 21(3) and 21(4) have no application in the circumstances of this appeal.

If none of the presumptions in section 21(3) applies, the institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

The appellant identifies all of the factors listed in section 21(2) as relevant considerations in this appeal, with the exception of the factor in paragraph (g). They read as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

…

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The factors in paragraphs (a), (b), (c), and (d) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (h), and (i) weigh in favour of privacy protection.

Section 21(2)(a): public scrutiny

The appellant submits:

> With respect to the question of inquiry regarding section 21(2)(a), subjecting the activities of the government of Ontario and its agencies to public scrutiny, the appellant takes the position that sections (9), (20), and (24) of the *Statutory Powers of Procedure Act* …, it is clear from these sections that the intent of the legislation is that it is desirable that matters heard before the Tribunal be subject to public scrutiny [sic].

Section 9 of the *SPPA* sets out general expectations that proceedings before tribunals should be open to the public, with certain exceptions. Section 20 requires tribunals to create a record of proceedings, and section 24, as described earlier in my discussion of section 21(1)(d), gives tribunals discretion to implement alternate notice processes for hearings and decisions.

I accept that one reason proceedings before administrative tribunals are generally open is to ensure that the public has an ability to witness the operation of the tribunal and to prevent what could be characterized as "secret law". In my view, including most administrative tribunals (including the Tribunal) under the scope of the *SPPA* is strong evidence of a public expectation that these bodies would operate in a transparent fashion. However, it does not necessarily follow that the unit numbers of apartment buildings that are involved in various Tribunal proceedings, which is the only information under consideration here, must be made available to an individual who is not a party to those proceedings in order to meet this expectation.

The Tribunal is an "institution" covered by the *Act* and is bound by its provisions, including the mandatory section 21 privacy exemption. When a request has been made under the *Act* for access to Tribunal records, even records that relate directly to files that proceed to a public hearing, the request must be tested under the access provisions in the *Act* when considered outside the context of the Tribunal's proceedings. In the case of information that qualifies as "personal information" under the *Act*, there is a strong assumption against disclosure, although the balancing process under section 21(2) recognizes that, in certain circumstances, factors favouring disclosure will be sufficient to outweigh those favouring privacy protection. While the *SPPA* addresses public scrutiny considerations in the context of hearings, in my view, it does not necessarily follow that personal information must be accessible outside the context of these proceedings in order to ensure that the Tribunal is operating in an open and transparent manner.

The accessibility of "personal information" is governed by the *Act*. I do not accept the appellant's position that providing access to the unit numbers of apartments that are subject to various Tribunal applications is either necessary in order to meet public scrutiny concerns or effective in subjecting the Tribunal's activities to public scrutiny, as required by section 21(2)(a).

Accordingly, I find that section 21(2)(a) is not a relevant factor as it relates to the disclosure of apartment unit numbers contained in the records.

Section 21(2)(b): public health and safety

The appellant argues that disclosing the requested information may promote public health and safety:

> … [T]he Appellant takes the position that this would apply occasionally, such as with applications regarding "Impaired Safety", and Tenant's applications with respect to "substantial contravention of municipal health and building standards". Applications for impaired safety often involve matters wherein a person's actions or a situation that may potentially cause a danger to individuals other than the

> applicants. Whether or not a danger exists to the public is in fact one of the tests the applicant must prove in the adjudication of impaired safety applications. In relation to Tenant's application the applicant must prove specific consequence in relation to any contravention of the municipal standards. The Appellant therefore takes the position that access to the information under consideration in this appeal could potentially enable an individual to become aware of potential problems with a specific address and subsequently avoid them.

I understand that some applications brought before the Tribunal are themselves related to health and safety standards. However, I am not persuaded that disclosing unit numbers of apartments whose residents are subject to various Tribunal applications can itself assist any person, including the appellant in this case who is not a party to any application, to promotion of public health and safety. In my view, any connection to the ability to promote public health and safety is simply too remote to bring it within the scope of the section 21(2)(b) factor.

Accordingly, I find that section 21(2)(b) is not a relevant factor as it relates to the disclosure of apartment unit numbers contained in the records.

Section 21(2)(c): purchase of goods and services

The appellant argues that disclosing the requested information would promote informed choice in the purchase of goods and services:

> Section 10 of the *Statutory Powers of Procedure Act …*, states:
>
> > A party to a proceeding may be represented by counsel or an agent.
>
> Under the previous memorandum of understanding, agents and counsel were able to directly correspond with the parties to a proceeding. The memorandum of understanding promoted informed choice with respect to the purchase of goods and services, by:
>
> > (1) ensuring that the parties to a proceeding were aware of the proceedings, independently of the applicant's statutory obligation to serve notice. Some applicants believe that not serving the requisite documents will improve their case or enable them to take advantage of the default order process. As a result of the previous memorandums of understanding parties could be made aware of their rights; provided with information about agents experienced in this specific type of representation, and therefore be in a position based on direct marketing to choose representation based on price; representative's availability, as well as the representative's knowledge of the applicable laws, regulations and proceedings.

Again, I am not persuaded that disclosing unit numbers of residential buildings occupied by tenants who are the subject of an application before the Tribunal would "promote informed choice in the purchase of goods and services". Clearly, parties to any application before the Tribunal have a right to seek advice and/or representation by an individual who is knowledgeable and experienced in the practices of the Tribunal. However, this is a right that belongs to a party, not a provider of services such as the appellant. Although I accept that disclosing the unit numbers would facilitate the appellant in contacting tenants to promote its services, it does not necessarily follow that all tenants would necessarily want to be contacted by the appellant, nor does it reasonably follow that without solicitation tenants will remain unrepresented or without means to obtain advice on how or whether to defend against the eviction applications made against them. Tenants subject to Tribunal applications are able to seek representation and advice of their own volition by consulting with lawyers, agents and community legal clinics. As well, the appellant is in a position to advertise and promote its services without the need to access the tenants' personal information.

Accordingly, I find that section 21(2)(c) is not a relevant factor as it relates to the disclosure of apartment unit numbers contained in the records.

Section 21(2)(d): fair determination of rights

The appellant submits:

> In regards to the question of inquiry relating to section 21(2)(d), the appellant takes the position that the information requested is relevant in a fair determination of the rights affecting [the appellant]. The right of the appellant that is affected is the right to access the requested information in accordance with sections 1 and 10 of [the *Act*] in conjunction with sections 5, 9, 20 and 24 of [the *SPPA*] for reasons previously stated.

The provisions of the *SPPA* referred to by the appellant deal with issues of notice, hearing procedure and a tribunal's records of proceedings. Section 1 of the *Act* is a general purpose clause, and section 10 provides for a general right of access under the *Act*.

As the wording of section 21(2)(d) makes clear, this factor only comes into play when the personal information "is relevant to a fair determination of rights affecting *the person who made the request*". That is not the situation here. Although the appellant acts as agent to tenants on applications before the Tribunal, his request under the *Act* was not made in the capacity of an agent for any identified client. The appellant is not involved in any dispute in which his rights are at issue, and any role the appellant may play in representing other unidentified individuals in exercising rights is simply not relevant in the context of section 21(2)(d), which speaks to the rights of requesters or their agents or counsel.

Accordingly, I find that section 21(2)(d) is not a relevant factor as it relates to the disclosure of apartment unit numbers contained in the records.

Summary and conclusions

I have determined that there are no factors under section 21(2) that favour disclosing the unit number of apartments whose residents are subject to applications before the Tribunal. Because section 21 is a mandatory exemption, in the absence of any factors favouring disclosure I must conclude that the requirements of the exception in section 21(1)(f) are not present, and that disclosing the unit numbers would constitute an unjustified invasion of the privacy of tenants residing in these units. Therefore, the unit numbers contained on the various Tribunal forms qualify for exemption and, subject to my discussion of section 23 below, must not be disclosed.

PUBLIC INTEREST OVERRIDE

The appellant submits that the "public interest override" in section 23 of the *Act* applies in this case. Section 23 reads as follows:

> 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.

For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the 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].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Is there a compelling public interest in disclosing the unit numbers?

The appellant submits:

> … [t]he appellant asks the commissioner to consider the fact that although section 174 of [the *TPA*] and section 5 of [the *SPPA*] identify the specific parties to an application, often there are other individuals who in accordance with these sections, are not named at the time of filing and therefore not notified of the proceedings, but may be affected by the proceedings. This regularly occurs for no other reason than the applicant may or may not be aware of the individual, (i.e.

> roommates or other occupants such as common law spouses, or property owners such as partners etc.). In such cases the ability to access the information requested by the appellant would enable the individual to exercise their rights by having themselves [sic] added as a party to the application, by motion to the Tribunal pursuant to section 174(2) of [the *TPA*]. In this regard, section 23 of [the *Act*] may be found to apply.

The appellant's submissions point to the impact of the current regime for dealing with landlord-tenant disputes under the *Tenant Protection Act*, and some perceived inequities relating to the processes governing the operation of the Tribunal. Some of these perceived inequities appear to stem from the lack of a statutory obligation on the part of the Tribunal to notify tenants when an application affecting their interest has been filed. The appellant is not alone in expressing these concerns. I am aware that a number of other individuals and organizations have voiced similar concerns, including legal aid clinics and academics. I am also aware that submissions have been made to the Mayor of the City of Toronto and to the provincial Ombudsman calling for action to correct these perceived inequities.

That being said, what is important for me to state and for the appellant to recognize is that my capacity to address any such perceived inequities is restricted to the context of the *Act* and the powers and duties given to me by the legislative assembly in that regard. The appellant has made a request under the *Act* for access to information contained in records held by the Tribunal, and will be provided with the vast majority of this information as a result of my findings in this order. The only withheld information is the unit number component of the address of residences housing tenants who are the subject of various Tribunal applications. Having found that this information qualifies under the mandatory section 21 privacy exemption, it is now my responsibility to determine whether there is a compelling public interest in disclosing *this specific information* in the context of this appeal.

While I am prepared to accept that the issues raised by the appellant and others raise compelling matters of public interest, in my view, that is not sufficient to meet the requirements of the first part of section 23. There must be a compelling public interest *in disclosure of the information protected by the exemption claim*, which in this case is restricted to the unit numbers contained on the various application forms. I am unable to conclude that there is. The *Tenant Protection Act* is the current law governing landlord-tenant relationships. It was passed by the legislature following public debate. The appellant may feel that the statutory provisions and the procedures enacted by the Tribunal to adjudicate disputes do not adequately balance the public interest considerations relating to landlord-tenant disputes. I make no finding and offer no opinion on this because, quite simply, I have no jurisdiction to do so. My only comment in that regard is that there are other channels available to the appellant and others to advance their positions and to effect change, but the *Act* is quite limited in that regard. My only role here is to determine whether there is a compelling public interest in disclosing the unit number contained in the records, and I find that there is not.

While the appellant's representations may demonstrate a "rousing strong interest or attention" in the landlord-tenant dispute resolution scheme under the *Tenant Protection Act*, the appellant has not convinced me that there is a "rousing strong interest or attention" in disclosing the unit numbers of residential apartments housing tenants involved in various landlord-tenant disputes, as required in order to satisfy the requirements of the first part of the section 23 test.

Accordingly, I find that section 23 has no application in the circumstances of this appeal.

ORDER:

1. I uphold the Tribunal's decision to withhold the unit component of the address information contained on the various Tribunal forms.

2. I order the Tribunal to disclose to the appellant the other requested information contained on the various Tribunal application forms, except for the unit component of the address information, by **May 19, 2004.**

3. In order to verify compliance with this order, I reserve the right to require the Tribunal to provide me with a copy of the information disclosed to the appellant pursuant to Provision 2, upon request.

Original signed by: April 28, 2004
Tom Mitchinson
Assistant Commissioner