



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

ORDER MO-1862

Appeal MA-030343-1

The Corporation of the City of London



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NATURE OF THE APPEAL:

This appeal concerns a decision of the Corporation of the City of London (the City) made pursuant to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester (now the appellant) had sought access to the names of the registered licence holders of two specified taxicabs.

The City denied access to the information under section 14(1) (personal privacy) of the *Act*, on the basis that it qualifies as personal information.

The appellant appealed the City's decision to deny access.

During the mediation stage, the appellant indicated that there was a compelling public interest in the disclosure of the information requested and raised the application of section 16 (public interest override) of the *Act*.

Also during the mediation stage, the City agreed to review its initial decision to deny access to the information relating to one of the licence holders. The City, subsequently, issued a new decision letter in which it agreed to grant access to the information at issue relating to this licence holder. The City continued to withhold access to the information relating to the second licence holder, pursuant to section 14(1). The City indicated that disclosure of this information would reveal financial information about the second licence holder and advised that it was relying on the factor in section 14(3)(f) to deny access.

I began my inquiry by issuing a Notice of Inquiry and seeking representations from the City and one affected party.

The City submitted representations and a copy of the non-confidential portions were shared with the appellant. The affected party also submitted representations; however, they did not directly address the issues in dispute in this appeal and so I elected not to share them with the appellant.

I then sought and received representations from the appellant.

RECORDS:

There is one record at issue, a one-page document that contains the name of a registered licence holder of a specified taxicab at the time of the request.

DISCUSSION:

PERSONAL INFORMATION

What constitutes “personal information”?

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name if 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The meaning of “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 a 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].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The two-step approach in Order PO-2225

I invited the parties to comment on Assistant Commissioner Tom Mitchinson’s interpretation of the personal information/business information distinction in Order PO-2225, since at the time of conducting this inquiry it set out the most recent interpretation of that distinction by this office. In that case, the requester sought access to the names of those landlords who were not corporations who owed money to the Ontario Rental Housing Tribunal (the Tribunal). The Assistant Commissioner, in concluding that the names of non-corporate landlords is “about” those individuals in a business rather than a personal capacity, set out the following two-step approach for conducting this analysis in his decision:

. . . 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.

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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*.

Significantly, the two-step approach described in Order PO-2225 was adopted and applied by Adjudicator Donald Hale in Order MO-1858, an appeal also involving a request for access to the name of the holder of a specified taxicab licence issued by the City of Toronto.

For the purposes of this appeal, I adopt the two-step approach described in Order PO-2225 and applied in Order MO-1858. I now turn to a review and analysis of the parties’ representations to determine whether or not the information at issue in this case qualifies as personal information.

In what context do the names of the individuals appear?

The City acknowledges that the name of the licence holder appears in the context of a business licence that it has issued. Therefore, it submits, that the “name of a business licence holder, much the same as a landlord, is a business context.” The City states that it is the second part of the analysis that is the key consideration.

The appellant states that all taxicab licences issued by the City are business licences and the operation of a taxicab is clearly a business.

Applying the Assistant Commissioner’s reasoning in Order PO-2225 regarding the first part of the analysis, Adjudicator Hale states as follows in Order MO-1858:

...I find that the taxicab owner is similarly engaged in a profit-motivated business activity, as opposed to an activity within his or her personal sphere. The holder of a taxicab license has also made a business arrangement in order to realize income and/or capital appreciation in the asset, the license, that he or she owns. Again, income and expenses incurred in the operation of that license fall within the provisions of the *Income Tax Act* as well. I find that, for the purposes of the first part of the test set forth in Order PO-2225, the taxicab license holder is carrying on a business activity.

I find the conclusions reached by Adjudicator Hale regarding part one of the two-step approach equally applicable in this case. In addition, the parties' representations appear to be in agreement that the name of the owner of the taxicab licence is provided in a business context. Therefore, I find that for the purposes of the first part of the test articulated in Order PO-2225, the taxicab licence holder is carrying on a business activity.

Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

The City concedes that the "mere holding of a business licence [...] may not be 'personal information' according to Order PO-2225." However, the City adds: "...if there is some benefit beyond the mere holding of the licence, then that benefit may 'reveal something of a personal nature about the individual'." In this vein, the City argues that the nature of taxicab licensing is different from many other forms of business licensing, to the extent that the City carefully regulates the number of licences it issues thus creating a competitive "private market" for taxicab licences. The City argues that while the cost of purchasing a taxicab licence is only \$430.00, due to the limited number issued, an existing licence holder retains a "private market value" for that licence on the open market. The City suggests that the "licence itself may have a value in the private market greater than that typically expected of a licence" and so revealing the holder's name "may take the information from the business realm into the personal". Relying on wording in Order PO-2271, the City argues

...even though the information does relate to the individual in a business capacity, [...] it may still qualify as personal information because it reveals something of a personal nature about the individual with respect to their finances, income, assets, net worth, or financial activities. [...] [T]he type of information that would be revealed in this case regarding the individual's finances, income, assets, net worth or financial activities would be substantially greater than the information revealed about the landlord in PO-2225, in which no information about the landlord's finances, income, assets, net worth, or financial activities would be revealed."

The appellant submits that the City's "private market value" argument is "specious at best". The appellant argues that the "inflated private market value of taxicab licences" exists, in part, because the City has

turned a blind-eye or has been unable to stop rampant, but prohibited ‘taxi-plate leasing’, whereby licence holders cream off hundreds of thousands, if not millions, annually from the industry (revenue without expenses) without actually participating in the day-to-day operation of the industry.

By shielding these natural persons from public scrutiny, it helps to ensure that these industry inequities will grind on for many more decades.

I do not find the parties’ representations particularly helpful in addressing the second part of the analysis set out in Order PO-2225. The appellant’s representations provide insight into the policy reasons for wanting the information at issue but do not directly address part two of the test. On the other hand, while the City attempts to address part two of the analysis I find its representations speculative at best. The City suggests that disclosure of the licence holder’s name “may” reveal something of a personal nature about that individual, in particular, information about their personal financial circumstances. In my view, the City has failed to provide reasonable evidence in support of its position. Firstly, the affected person (the holder of the licence) would be in the best position to present this argument and she has chosen not to do so. Secondly, while there may be a “private market” for the sale or lease of taxicab licences, it does not necessarily follow that someone with knowledge of an owner’s name would gain meaningful insight into that individual’s personal financial information. Thirdly, if ownership of a taxicab licence is by its nature a business venture (as determined above under the first part of the test), I have not been provided with evidence or argument to support a finding that the holding of that licence would allow the information to “cross over” into the personal realm.

In applying the second part of the two-part approach articulated in Order PO-2225 to the facts in Order MO-1858, Adjudicator Hale states:

...I find that there is nothing inherently personal about the holding of a taxicab license that would allow the information to “cross-over” into the personal realm. The holding of a taxicab license is not something that relates to the individual’s “personal life” but rather is concerned with his or her business activities. As a result, I find that in the circumstances of this appeal, it does not qualify as information that is inherently personal for the purposes of the test outlined in Order PO-2225.

For the same reasons expressed by Adjudicator Hale in Order MO-1858, I find that in the circumstances of this appeal, the holding of a taxicab licence does not qualify as information that is inherently personal for the purposes of the approach set out in Order PO-2225.

Having carefully considered the parties’ representations, for the reasons outlined above, I conclude that the information at issue in this appeal – the name of a taxicab licence holder – is “about” this individual 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 14 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.

ORDER:

1. I order the City to disclose the contents of the record at issue in its entirety to the appellant by **December 3, 2004** but not before **November 26, 2004**.
2. In order to verify compliance with the terms of provision 1 of this order, I reserve the right to require the City to provide me with a copy of the record that is disclosed to the appellant.

Original Signed by: _____
Bernard Morrow
Adjudicator

_____ October 28, 2004