ORDER PO-2269

Appeal PA-030133-1

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In response to Order PO-2109, the Tribunal rescinded its outstanding Memoranda of Understanding for "custom reports" and denied subsequent requests under the *Act* for information contained in Tribunal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 an updated report detailing information contained in Above Guideline Rent Increase applications (AGI applications) currently active at the Tribunal. Specifically, the request was for:

- application file numbers
- addresses of the rental units to which the applications apply
- the number of affected units for each application
- date of hearing for each application
- date of filing of each application

The Tribunal identified the responsive records and denied access to all of the information under section 21(1) of the *Act* (invasion of privacy). In its decision letter the Tribunal stated:

> In light of the IPC decision [Order PO-2109], I believe the information you are requesting is personal under [the *Act*]. The information still includes the address of the building, which allows you to contact tenants at their homes, even without their names (for example, by addressing a letter to "occupant"). Given that this contact would be initiated based on your knowledge that they are a respondent to a Tribunal application, 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.

Mediation was not successful, and the appeal was transferred to the adjudication stage.

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 report compiled from information contained on the AGI applications. I have reviewed a sample of an AGI report previously provided by the Tribunal to the appellant in response to a similar request. The sample report contains all of the information at issue in this appeal. The Tribunal has also provided me with a sample AGI application file. While the AGI application forms contain the names of tenants that are parties to the applications, as well detailed information about the circumstances surrounding the applications themselves, the information sought by the appellant here is limited to the following:

- the file numbers of all active AGI files
- the filing dates
- the addresses to which the applications relate
- the number of units affected by the application
- the hearing dates

As the appellant makes clear in its representations, it does not want access to names, telephone numbers, amounts of rent paid or owed, or any other specific details about the application.

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:

> Our request is quite distinguishable from Order PO-2109. We ask for no names. We ask for no telephone numbers. We do not ask for the rent being paid. We do

> not ask for information concerning the parties such as rent arrears. We do not seek details of the application or the basis of the application. We do not seek the right to view any files pursuant to this request.

The appellant further submits that the information is not personal information as defined by section 2(1) of the *Act*:

> Only clause 2(1)(c) and 2(1)(d) could possibly be distorted in meaning to remotely be construed as personal. A residential address is requested, but without individual personal information. From the information requested, we could not know that Mary Jones lives at 123 Smith Street, Apartment 101. We would know that unidentified tenants living at 123 Smith are facing an above guideline rent increase. We are not requesting specific apartment numbers and no telephone numbers.
>
> We also wish to address the Tribunal "concern", that we could use the information to write to tenants of the building as "dear occupant". Unless the tenant actually has the name "Occupant", this concern is ridiculous. Further, the Tribunal is well aware of how we use the information. The information is used to benefit tenants (without cost to them). The landlord (the applicant to the Tribunal) already has the information.

In its representations, the appellant also provides further detail on why the information is being requested:

> The information requested is not otherwise published. The fact that a landlord has applied for an above guideline increase must only be disclosed to an affected tenant 30 days in advance of a hearing as part of the notice of hearing. A landlord need only notify an individual tenant of any rent increase pursuant to the Tenant Protection Act. This is at a point 90 days prior to that tenant's rent increase.
>
> In other words, tenants are not made aware of an Above Guideline Rent Increase application at the time the application is made. Our intent is to have a way of being aware on a general basis that an application has been made to the Tribunal. Our mandate is to educate and inform tenants (generally) as to their rights and obligations pursuant to the Act. More specifically, we have a contract with the City of Toronto pursuant to the Toronto Tenant Defence Fund to assist tenants who wish to dispute above guideline rent increase applications.
>
> For example, let us assume an application at 123 Smith Street affecting 150 units and with a hearing scheduled for forty-five days from now. The tenants would not be aware of any pending application except for forty-five days from now. The tenants would not be aware of any pending application except for those who had received a notice of rent increase above the guideline. In that case, those tenants

> would only be aware that an application would be necessary. Our request permits us as a Tenant Advocacy organization to be aware of applications (not personal information), and to target our services to those in need without cost to them.

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 file numbers of all active AGI 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 appellant's representations clearly state that it is not "requesting specific apartment numbers". Apartment numbers are also not listed on the sample AGI report provided to me by the Tribunal. The "address" being requested by the appellant is the address of the buildings that contain units that are subject to above guideline rent increases, and not any specific addresses of individual units within these buildings.

In my view, without individual unit numbers, there is no reasonable expectation that an individual can be identified from the disclosure of the addresses of buildings containing units that are subject to above guideline rent increases. Accordingly, I find that building addresses contained on AGI applications, without the individual unit numbers, do not contain information about an identifiable individual, and therefore do not qualify as "personal information".

Other information

The other requested information consists of the application filing and hearing dates and the number of units affected by each application.

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 and hearing dates and the number of units affected by the various AGI applications.

Conclusion

I find that none of the requested information qualifies as "personal information" under the *Act*. Because the section 21(1) exemption relied on by the Tribunal in this case cannot apply where no "personal information" is at issue, and no other exemptions have been raised, the information must be disclosed to the appellant.

ORDER:

1. I do not uphold the Tribunal's decision to withhold the requested information.

2. I order the Tribunal to disclose the requested information to the appellant, 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