ORDER PO-2265

Appeal PA-030192-1

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In response to Order PO-2109, the Tribunal rescinded its outstanding Memoranda of Understanding for "custom reports" and denied subsequent requests under the *Act* for information contained in Tribunal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 the release of "hearing docket information" to the Tenant Duty Counsel Program (the appellant). Specifically, the requester seeks the following information:

- List of all applications by file number scheduled to be heard on the day of hearing
- Names and addresses of all tenants involved in the matter
- Names and addresses of all landlords involved in the matter
- Type of application
- Date the applications were filed

The requester asks that the information be provided at least one day before the day of hearing "directly to individual duty counsel practicing around the province, or alternatively, to the

[Tenant Duty Counsel] office in Toronto for distribution to individual duty counsel across the province."

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:

> Hearing lists of the type described above were previously provided to the Tenant Duty Counsel Program. However, in Order PO-2109, Assistant Commissioner Tom Mitchinson found that names and addresses of parties to Tribunal applications would meet the definition of personal information in section 2 of [the *Act*]. Further, the adjudicator found that this information should fall within the scope of the mandatory exemption under section 21 of [the *Act*] and should not be disclosed. As a result of this order, the Tribunal reviewed its policies related to disclosure of information, and determined it could no longer provide hearing lists that contain the names and addresses of the parties to the applications.
>
> Pursuant to Order PO-2109, I consider the information that you have requested to be personal information pursuant to the definition in section 2 of [the *Act*], and that disclosure of the information 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 the specific record being requested is entitled "Cases in a Hearing Block with Party Names."

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 is this appeal is a report titled "Cases in a Hearing Block with Party Names", and contains information from active landlord and tenant applications received by the Tribunal. I have reviewed a sample of the record as 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 detailed information surrounding the applications themselves, the information requested by the appellant here is limited to what appears on the record, which includes:

- Date, time and location of hearing
- File number of the application to be heard

- Address of the affected building, including unit, city and postal code
- Name of tenant and/or tenant's representative
- Name of landlord and/or landlord's representative
- Type of application
- Date the application was filed

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

> i) The Docket [the record] is a document generated by [the Tribunal] as part of its every day work flow, while the application list is a special document generated from [the Tribunal] database for requestors.
>
> ii) The Docket [the record] sets out all matters to be heard on a particular day. The hearings are public, and the names of the parties are announced during the hearing. In contrast, the application list records matters that have been filed by a landlord, it is released at the very start of the application process, and many of these matters may never go to a public hearing.
>
> iii) Dockets are routinely produced by courts and provided to family and criminal duty counsel.

The appellant also argues that "many of the issues raised herein were not addressed in PO-2109, and in particular arguments relating to section 21(1)(f) of [the *Act*] were not considered."

The appellant submits that the information in the record pertaining to tenants qualifies as "personal information" under the *Act*, but that the information pertaining to landlords does not.

The appellant submits:

> The [record] includes the tenant's name and address, which fall clearly within the definition of personal information under s. 2(1) of [the *Act*].
>
> The information as it relates to landlords is not "personal information" for two reasons:
>
> i) the actual published information does not fall within the ambit of s. 2(1); and
>
> ii) the information is business not personal.

The appellant relies on Orders M-118, M-176 and MO-1562 in support of its position that information about landlords relates to them in a business capacity and is not "about" the landlords in a personal sense. As such, the appellant argues that the information relating to landlords falls outside the scope of the definition of "personal information".

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 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 record at issue in this appeal contains the address to which the application applies, including unit number, street address, city and postal code.

In the 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 Tribunal has offered to provide [the appellant] with hearing lists that identify the cases scheduled for a particular day and the application type, without names and addresses of the parties to the application. However, I understand that this does not meet your needs.

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 before the Tribunal. 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 representative

"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 record requested by the appellant includes the names of tenants and landlords as well as any representatives involved in Tribunal applications.

The names of tenants, when included on a Tribunal 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, although he continues to seek access to the tenant names.

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 eviction 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.

I reach the same conclusion with respect to the names of the landlord and tenant representatives that appear on the applications, for the same reasons. The representatives' names do not appear in a context that is inherently personal, but are included because these individuals have entered into a professional relationship with a client. Disclosing the representatives' names would not reveal anything about them in a personal sense, and the names fall outside the scope of the definition of "personal information" in section 2(1) of the *Act*.

Accordingly, the names of the names of the landlords and representatives should be disclosed to the appellant.

Other information

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

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 tenant names and 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, representatives' names, application filing date, type of application, and date, time and location of hearing does not qualify for exemption and should be disclosed to the appellant.

PERSONAL PRIVACY

General principles

The only categories of information I will consider under the personal privacy exemption are the names of tenants and the unit number component of the address information contained on the various Tribunal application forms.

Section 21(1) of the *Act* prohibits the Tribunal from releasing "personal information" unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In the circumstances of this appeal, the appellant submits that section 21(1)(c) 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;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(c): public record

The appellant takes the position that the personal information in this case is collected and maintained specifically for the purpose of creating a record available to the general public. The appellant submits:

> [Tribunal] proceedings, like all judicial proceedings, are public proceedings and are open to the general public. As such, information created by the [Tribunal] for the adjudication process, even if personal, should be released under s. 21(1)(c) of

> [the *Act*], unless an order is made not to release the information under the *SPPA* [*Statutory Powers of Procedure Act*].

In support of their position, the appellant submits that our system of justice and adjudication is an open one and that its openness is of vital importance because it ensures the integrity of the judicial system; ensures an understanding among the citizens of the administration of justice; prevents abuse and injustice; and prevents the creation of "secret law". The appellant cites various court judgements that support the fundamental importance of an open judicial system, as well as section 135 of the *Courts of Justice Act,* which codifies the requirement for public court hearings.

The appellant points out that court files are open for inspection from court offices for a fee, and submits that court dockets in family and criminal matters are routinely issued to duty counsel.

The appellant submits that the *SPPA* "ensures that openness of the adjudication process applies equally to administrative tribunals." It cites section 9 of the *SPPA* which reads:

> An oral hearing shall be open to the public except where the tribunal is of the opinion that,
>
> (a) matters involving public security may be disclosed; or
>
> (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.
>
> In which case, the tribunal may hold the hearing in the absence of the public.

The appellant states that Tribunal hearing files had been open to the public under its Rule 16, but that the Tribunal amended this rule in July 2003 so that files are no longer accessible to the public.

The appellant also submits that the reasoning in Privacy Investigation Report PC-980049-1 and Order P-138 support its section 21(1)(c) arguments.

Privacy Investigation Report PC-980049-1 dealt with a complaint concerning disclosure of personal information from the land registration database. The appellant submits:

> … In Ontario, real property is registered in Land Registry Offices for the purpose of registering, storing and preserving documents, deeds, mortgages and plans of survey. The relevant legislation also establishes that this registry should be

public. Commissioner Ann Cavoukian found that the request information could be released under s. 37 of the *Act*. She states at page 5 of her Order:

> Thus, because there is a legal duty to make certain records available to the general public, a demonstrated practice of actually making these records available, and a standardised price applicable to users of the land registration system, it is our view that the personal information in question is maintained by the Land Registry Office specifically for the purpose of creating a record that is available to the general public.

Order P-138 dealt with a request for access to information contained on a particular form filed with the Ministry of Consumer and Commercial Relations pursuant to the *Corporations Information Act*. The appellant relies on the following quotation from my Order P-138:

> In my view, it is clear that the information contained on the Form 1 records was collected specifically for the purpose of creating a record available to the general public. These records were submitted pursuant to the requirements of section 4 of the *Corporations Information Act*, and, as noted earlier, section 10 of this statute provides a right of access by members of the public to these types of records.

In drawing an analogy to these two previous cases, the appellant argues:

> In our case, there is a legal duty to make hearings public, there is a legal tradition of openness in the adjudicative process and there is a history of open practice at the [Tribunal] and in other judicial forums in Ontario.

The appellant also disagrees with my interpretation of section 21(1)(c) in Order PO-2109, where I found that the Tribunal did not collect the personal information at issue in that appeal specifically for the purpose of creating a record available to the public, but for the purpose of the hearing that will determine the matter before the Tribunal. The appellant submits:

> We agree that the purpose that [the Tribunal] collects the data is for an adjudication process, but by virtue of the *SPPA*, jurisprudence and practice, the adjudication process is a public process and records created by it are public. Thus, in collecting data, [the Tribunal] does create a "record available to the general public", and information generated as part of the adjudication process, including the Docket, tribunal files and order, should be publicly available.

Addressing the concerns raised in Order PO-2109 about the availability of bulk personal data in electronic format, the appellant proposes a "simple solution". It suggests that the Tribunal continue to provide data from its database, including bulk requests, but only if "the purpose of the request is consistent with the rational behind an open judicial system".

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 maintain 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 appellant also relies on Privacy Investigation Report PC-980049-1 and PO-138. It suggests that because a legal duty exists under the *SPPA* to make hearings public, applying the rationale from these two previous decisions, I should order the personal information at issue in this appeal to be disclosed.

I do not accept the appellant's position. In my view, Privacy Investigation Report PC-980049-1 and Order PO-138 can be distinguished from the facts of this appeal (and also from Order PO-2109) on the basis that the personal information at issue in the two previous cases was collected **specifically** for the purpose of creating a public record. Here, as the appellant appears to acknowledge, the primary purpose for collecting any personal information contained on Tribunal applications is for the adjudication process, not to create a public record.

Although the appellant's analogy between open court processes and the transparent conduct of hearings by tribunals covered by the *SPPA* has some merit, they are not identical. For example, section 65(4) of the *Act* excludes documents prepared and filed for the purposes of proceedings before the Courts from coverage under Ontario's freedom of information regime; while administrative tribunals, including the Tribunal, are subject to the *Act* and bound by its access and privacy requirements. Accordingly, while the Tribunal's hearings and procedures must comply with the *SPPA*, decisions regarding disclosure of personal information contained in records outside the actual hearings process must be determined in accordance with the requirements of the *Act*.

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 previous jurisprudence from this office 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)(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) clearly 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. 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;
>
> (g) the personal information is unlikely to be accurate or reliable;
>
> (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), (g), (h), and (i) weigh in favour of privacy protection.

Section 21(2)(a): public scrutiny

The appellant submits that the disclosure of the records at issue is desirable for the purpose of subjecting the activities of the Tribunal to public scrutiny.

The appellant identifies the two elements that must be established for section 21(2)(a) to be considered relevant, as outlined in Order M-1174:

1. The activities of the institution must have been publicly called into question; and

2. The disclosure of the personal information must be desirable in order to subject the activities of the institution to public scrutiny.

As far as the first requirement is concerned, the appellant states that the Tribunal's activities have been publicly called into question. The appellant indicates that it filed a complaint with the provincial Ombudsman in 2002, questioning the fairness of certain Tribunal procedures under the *Tenant Protection Act* (the *TPA*), which received media attention. The appellant also submits that other legal clinics are on record as publicly criticising the fairness of some of the Tribunal's processes, and that the City of Toronto and City of Ottawa have both passed motions in support of the appellant's complaint to the Ombudsman.

Based on the representations and supporting materials provided by the appellant, I accept that certain activities of the Tribunal in discharging its mandate under the *TPA* have been called into question.

The appellant also submits that the requested information would be desirable in subjecting the Tribunal to public scrutiny. In support of this position, it points to statistics demonstrating that eviction applications are the predominant activity of the Tribunal, and that "[the Tribunal] deals with more Ontario residents than any other single Ontario adjudicative agency." The appellant continues:

> Moreover, the tenant population appearing before the Tribunal is characterized by economic disadvantage (as demonstrated by the predominance of arrears applications) and by overrepresentation of groups identified by a prohibited ground of discrimination. In view of these circumstances, it is particularly important that [the Tribunal] processes be open to public scrutiny and be seen to be demonstrably fair to tenant parties. …

> The public release of the Docket ensures that: the public knows what matters are down for hearing; duty counsel can effectively provide advice to tenants; and duty counsel can monitor processes at [the Tribunal].

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 names of tenants and the unit numbers of apartment buildings where they reside, which is the only information under consideration here, must be made available to an individual who is not a party to those proceeding 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 tenant names and unit numbers of apartments 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 tenant names and 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:

> There is currently no quantitative data concerning the impact of the duty counsel program on outcomes in [Tribunal] hearings. However, it is a fair assumption that tenants who have been apprised of their legal rights and obligations will be in a better position to protect their home and their health, and avoid pecuniary loss or the other harms associated with homelessness.

The appellant points to a 1999 report of the City of Toronto Mayor's Homelessness Action Task Force, which concluded that legal assistance helps reduce evictions.

The appellant also submits that children who are homeless face a greater risk of being apprehended by the Children's Aid Society, and suffer serious long-term effects relating to heath, ability to perform at school, and the ability to socialise and make friends.

I do not dispute the appellant's position that actions taken to prevent homelessness are positive and contribute to a healthier and safer society. However, I am not persuaded that disclosing tenant names and unit numbers of apartments whose residents are subject to Tribunal applications can itself assist any person, including the appellant in this case, to promote 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 the tenant names and apartment unit numbers contained in the records.

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

The appellant submits:

> Duty counsel provide legal advice and assistance to eligible tenants appearing before [the Tribunal]. The main purpose of this advice is to ensure that tenants can make informed choices about their legal rights before [the Tribunal].
>
> … [t]he Docket is a key tool that duty counsel use on a regular basis to provide advice to tenants. The release of the Docket to [the appellant] helps ensure that tenants make informed choices at the Tribunal and in their future dealings in the residential housing market.

Again, I am not persuaded that disclosing tenant names and 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 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 the tenant names and apartment unit numbers contained in the records.

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

The appellant submits that the personal information is relevant to a fair determination of rights:

> It is the experience of [the appellant], that tenants are often intimidated by their landlords, do not understand [the Tribunal] process, and do not know where to get help. Left on their own, tenants are often unable to navigate the process or get the help they require. Tenants benefit from an activist [appellant] program that seeks them out and offers services to them. The [record] allows duty counsel to be activist in providing services to tenants.
>
> Ensuring that tenants are advised about the duty counsel service and of their rights helps to ensure the fair determination of rights.

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 represents tenants on applications before the Tribunal, its request under the *Act* was not made in the capacity of an agent or counsel for any identified client. The appellant is not involved in any dispute in which its 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 tenant names and 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 tenant names and 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 tenant names and unit numbers would constitute an unjustified invasion of the privacy of tenants residing in these units. Therefore, the tenant names and unit numbers contained on the various application forms qualify for exemption and, subject to my discussion of section 23 below, must not be disclosed.

PUBLIC INTEREST OVERRIDE

General principles

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 tenant names and unit numbers?

The appellant submits that there is a compelling public interest in ensuring that individuals have access to legal advice before appearing before the Tribunal and in preventing the eviction of low-income tenants.

The appellant submits that the services it provides to low-income tenants is in the public interest, and refers to remarks made by Chief Justice McMurtry on the critical role that legal aid plays in protecting our social fabric.

The appellant also submits that avoiding evictions is in the public interest, both financially and socially, and points to publications in support of its position that tenants in this situation face "further financial harm, potential damage to reputation, and increased emotional stress that can have serious impacts on all aspects of life".

Finally, the appellant submits that the cost of unnecessary evictions is felt at the level of the community as well:

> … Communities are forced to bear the costs associated with increases in uses of temporary shelter accommodation and homelessness. Governments at municipal, provincial and federal levels have identified the prevention and ending of homelessness as important priorities.

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 other legal aid clinics and academics. I am also aware that submissions have been made to the Mayors of the City of Toronto and the City of Ottawa 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 names of tenants and 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 names of tenants and 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 tenant names and unit numbers 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 tenant

names and 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 tenant names and 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 tenant names and 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