



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

ORDER MO-1858

Appeal MA-040028-1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to the name of the owner of a specified taxicab licensed by the City. The taxicab was involved in a motor vehicle accident with the requester in 2002. The City located two responsive records and denied access to them, claiming the application of the invasion of privacy exemption in section 14(1) of the Act.

The requester, now the appellant, appealed the City's decision. Mediation of the appeal was not possible and the matter was moved into the adjudication stage of the appeals process. I sought and received the representations of the City, initially. Those submissions were then shared in their entirety with the appellant, along with a Notice of Inquiry. The appellant provided representations which I shared with the City. I also invited the City to submit additional representations by way of reply but received no response.

RECORDS:

The records consist of two pages, generated from the City's Municipal Licensing and Standards electronic database. They consist of a Client Inquiry/Update printout and a one-page Plate Inquiry/Update printout.

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].

Representations of the parties

In support of its decision to deny access to the name of the taxicab license holder, the City relies on my decision in Order MO-1010 in which I held that:

. . . the names of [taxi] license holders and agents who are natural persons, along with their addresses, telephone numbers, license numbers, leasing status and the date their license were issued, constitute the personal information of these individuals within the meaning of section 2(1).

In the present appeal, the undisclosed information consists of the name of the owner of the taxi license, as well as that of the lessee of the licence and the agent of that individual. The City submits that their names, taken in the context of holding a taxi license, constitutes the personal information of these individuals, as opposed to information about their business activities. The

City urges that I follow the reasoning set forth in Order MO-1010 in which I found that information about a taxicab license holder, including his name, qualifies as the personal information of that individual. The City also submits that the information falls within the ambit of sections 2(1)(b), (d) and (h) of the definition referred to above.

The appellant, on the other hand, submits that he is only seeking access to the name of the license owner and not to any other information about this or any other individuals. He argues that the information relates only to the license owner in his or her business capacity rather than in any personal capacity.

In support of this position, the appellant relies on a recent decision of Assistant Commissioner Mitchinson in Order PO-2225. 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 ORHT). The appellant submits that in Order PO-2225, Assistant Commissioner Mitchinson reviewed some past decisions of the Commissioner's office and provided a rationale to be employed in making a determination as to whether information contained in a record that relates to an individual's business activities qualifies as that individual's personal information for the purposes of section 2(1).

The appellant submits that, following the approach outlined in Order PO-2225, first step in making this determination is to decide "whether the context in which the names of individuals appeared was inherently personal or was, alternatively, of a business, professional or official government nature." He argues that Order PO-2225 then requires an examination as to whether the disclosure of the information would reveal "*something else* that was inherently personal in nature which would thereby bring the information within the definition of 'personal information'." [appellant's emphasis].

Applying the approach employed by the Assistant Commissioner in Order PO-2225, the appellant argues that the context in which the taxi owner's name appears in the record is a purely business one. In support of this position, he submits that:

1. The license owner is in the business of operating a taxicab, either directly or indirectly through its agent, lessees or assigns.
2. Individuals who choose to enter the taxicab business are required to obtain a license.
3. The aim of the license holder is to derive a profit, through fares or revenue generated from the lease of the license.
4. The Respondent [the City] is responsible for issuing new licenses and maintaining records in connection with license that have already been issued.

5. The Respondent's records contain, among other things, the names of license owners.
6. The fact that the license owner's name appears in the Respondent's records *is a direct consequence of the license owner's decision to participate in the taxicab business*. As such, the context in which the name appears in the records is of an inherently business nature. [appellant's emphasis]
7. The context is *not* personal, since the license owner's name would *not* appear in the records of the Respondent if he or she chose not to operate a business in the taxicab industry.

With respect to the second part of the analysis described in Order PO-2225, the appellant submits that the disclosure of the taxi license owner's name would reveal only that this individual is the owner of a specific taxicab license and that this "speaks to a business not a personal arrangement". The appellant concludes this part of his representations as follows:

. . . the information at issue in this appeal – the name of the license owner – is 'about' that individual in a business rather than a personal capacity. It therefore does not qualify as 'personal information' as defined by the *Act* and is accordingly not subject to the personal privacy protections afforded therein.

The appellant suggests that the rationale behind the decision of the Assistant Commissioner in Order PO-2225 represents the most recent interpretation placed on the definition of the term "personal information" by this office. As a result, the appellant urges that I not follow my earlier decision in Order MO-1010 in which I held that a taxi licence holder's name, address, telephone number, license number, leasing status and date of issuance of their license qualified as "personal information" for the purpose of section 2(1).

Analysis and Findings

I concur that the reasoning contained in Order PO-2225 sets out the most recent interpretation by the Commissioner's office about the personal information/business information distinction. As a result, I adopt the two-step approach described in that decision by Assistant Commissioner Mitchinson for the purposes of the present appeal.

In Order PO-2225, the Assistant Commissioner reviewed a number of previous decisions and articulated the first part of the analysis to be performed as follows:

. . . 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.

Extrapolating the same reasoning to the present fact situation, 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.

The Assistant Commissioner then imposes an additional requirement in order to make a finding that information relating to an individual's business activities does not qualify as his or her personal information for the purposes of section 2(1). He stated that:

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*.

Again, applying the rationale expressed in Order PO-2225, 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.

Having carefully considered the representations from both parties, and for all of the reasons outlined above, I conclude that the information at issue in this appeal - the name of the taxicab license owner - 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 name of the taxicab license owner that is contained in the records by providing him with a copy by **November 22, 2004** but not before **November 15, 2004**.
2. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the City to provide me with a copy of the records that are disclosed to the appellant.

Original Signed by: _____
Donald Hale
Adjudicator

October 15, 2004