



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER PO-2347

Appeal PA-030292-1

Ontario Rental Housing Tribunal



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NATURE OF THE APPEAL:

The Ontario Rental Housing Tribunal (ORHT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the rental history of a specified property purchased by the requester's client. The requester also asked ORHT to "advise whether or not the aforementioned building, tenants and current owners are involved in any outstanding claims and if so, how many and what units".

ORHT advised the requester that a total of 128 applications had been filed under the *Tenant Protection Act (TPA)* relating to the property, and that all but two of these applications concerned tenancy terminations that had since been resolved. Of the remaining two applications, one is a tenant application alleging interference with reasonable enjoyment of the residence (ORHT file TET-02094), and the other is an application to increase rent by more than the allowable guideline (ORHT file TEL-19402). ORHT denied access to all records related to those two applications on the basis that qualify for exemption under section 21 of the *Act*.

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

During mediation, the appellant narrowed the scope of the appeal to two records: an appendix attached to the ORHT order disposing of file TEL-19402 (Record #1); and the ORHT order disposing of file TET-02094 (Record #2). The actual order for file TEL-19402 was disclosed. Also during mediation, ORHT issued a revised decision letter, providing the appellant with all portions of Record #2, with the exception of the unit number and names of the tenants who were parties to file TET-02094.

Further mediation was unsuccessful and the file was transferred to me for adjudication.

I began my inquiry by sending a Notice of Inquiry to ORHT, outlining the facts and issues and seeking representations. I also provided a copy of the Notice to the two individuals who are identified by name in the file TET-02094, as affected parties whose interests might be affected by the outcome of the appeal. ORHT chose not to provide representations in response to the Notice, and the copy of the Notice sent to the affected parties was returned to this office as undeliverable. I then sent the Notice of Inquiry to the appellant, who also declined to submit representations.

RECORDS:

The information that remains at issue in this appeal is:

- Record #1 a 2-page appendix to the ORHT order disposing of file TEL-19402, which lists of the names of tenants who were residing in the property at the time of the above-guideline hearing.
- Record #2 the tenant names and unit number of the property address contained in the order issued by ORHT disposing of file TET-02094.

DISCUSSION:

PERSONAL INFORMATION

Introduction

In order for information to qualify for exemption under section 21, it must contain “personal information”. Personal information is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual”, including the address of the individual (paragraph (d)), and 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 (paragraph (h)).

Names

Tenant names are the only information at issue in Record #1. Record #2 also contains the names of two tenants, as well as the unit number where they lived.

In Order PO-2265, which also involved ORHT, I found that the names of tenants qualify as “personal information”:

The name of a tenant, when included on [ORHT] application forms, 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”.

I make the same finding here. Each tenant name that appears on the two records is information “about an identifiable individual”, specifically information that would reveal that the tenant was the subject of a dispute with his/her landlord. As such, the names of tenants in this context fall within the scope of the definition of “personal information”.

Address

All portions of the address of the property that was the subject of file # TET-02094 that appears in Record #2 have been disclosed to the appellant, with the exception of the unit number of the tenants who brought the application.

It is well established that an individual’s address qualifies as “personal information” under paragraph (d) of the definition of “personal information”, as long as the individual residing at the address is identifiable. However, if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act*.

Order PO-2265 also addressed the proper treatment of unit numbers. In that order I found that if the full address of units subject to ORHT applications, including the specific unit number were

disclosed, it was reasonable to expect that the individual tenant residing in the unit could be identified. I concluded that the full address of units consisted of the “personal information” of the tenants residing in them. However, I went on to find that if unit numbers are removed, the remaining components of the address - the building number, street, city, and postal code - do not provide sufficient information to reasonably identify a specific resident of a unit within a residential rental accommodation. I stated:

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.

ORHT followed the direction in Order PO-2265 and disclosed all portions of the property address contained in Record #2, with the exception of the tenants’ names and the unit number of their apartment.

Applying the reasoning in Order PO-2265, I find that disclosing the unit number contained in Record #2 would render what is currently non-identifiable information as “identifiable”. Accordingly, the unit number, when combined with other address information already disclosed to the appellant, would reveal the full address of the unit that was the subject of the tribunal file and thereby qualifies as the “personal information” of the tenants who resided in this unit.

INVASION OF PRIVACY

Where an appellant seeks the personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In my view, the only exception with potential application is section 21(1)(f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(2) provides some criteria for the institution to consider in making this determination; section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. 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).

In the circumstances, in the absence of representations from the appellant, I am not satisfied that disclosing the names of the tenants in Records #1 and #2 and the unit number of the residence identified in Record #2 would *not* constitute an unjustified invasion of personal privacy. Therefore, I find that the requirements of the exception in section 21(1)(f) have not been established, and the names and unit number must be withheld under the mandatory section 21 exemption.

ORDER:

I uphold ORHT's decision to deny access to the tenant names and the residential unit number.

Original Signed By: _____

Tom Mitchinson
Assistant Commissioner

November 25, 2004