ORDER PO-2267

Appeal PA-030123-1

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In response to Order PO-2109, the Tribunal rescinded its outstanding Memoranda of Understanding for "custom reports" and denied subsequent requests under the *Act* for information contained in Tribunal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 provision, on a weekly basis, of a listing of eviction applications filed in Ontario. Specifically, the requester seeks the following information for each eviction application:

- Case numbers
- Unit numbers to which applications apply
- Addresses to which applications apply
- Landlord information
- Dates that applications were filed
- Type of application

The requester also wants the Tribunal to disclose information about the disposition of eviction applications on a quarterly basis.

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 refers to the previous Memorandum of Understanding (MOU) that it had entered into with the requester, and states:

> The information requested above is very similar to the information you had been receiving until the MOU was cancelled, except that it does not include the names and telephone numbers of the tenants, or the amount of the arrears included in the application. In light of the [Order PO-2109], I believe the information is personal under [the *Act*], even without the names and telephone numbers. This information still includes the addresses of the parties, and addresses are considered personal information under clause 2(1)(a) 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:

There are two records at issue.

Record 1 is a custom report compiled from information contained on all active eviction applications received by the Tribunal. I have reviewed samples of reports previously disclosed by the Tribunal in response to a similar request by the appellant. The Tribunal has also provided me with a sample of their eviction application forms and an eviction file. While the application forms contain detailed information about the applications themselves, the information requested by the appellant is limited to the following:

- Case/file number
- Address of the unit affected by the application including unit number
- Date the application was filed
- Type of application
- Landlord name

Record 2 is a quarterly report containing the disposition data of eviction applications that have already been heard by the Tribunal.

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:

> This request is distinguishable from the request in Order PO-2109 in a number of important ways. First, the names of the tenants whose landlords have commenced

> applications for eviction has not be requested by [the appellant]. By severing tenants' names from address and other contact information sought by [the appellant], [the appellant] is able to continue to run its eviction prevention program by targeting units and not specific tenants. Thus, information can be provided to occupants of these units about their rights. In this way, the tenants' identities are protected and the only way for [the appellant] to learn these identities is if the tenants agree to reveal this when contacted by [the appellant] with offers of further assistance.
>
> This information sought in this case can also be distinguished from the information considered in Order PO-2109, as the information requested is information about the landlord and their holdings. In PO-2109 what was requested was tenants' names and residential addresses. This request was for personal information to be provided to a third party (the requestor) by someone ([the Tribunal]) other than the party to which it relates. In this case, the information requested by [the appellant] relates to the premises owned by the landlords filing the eviction applications. Thus, the information requested by [the appellant] is information that has been provided to [the Tribunal] by the landlord and is contained in a public record, which clearly distinguishes it from the information request made in Order PO-2109.
>
> Finally, and most importantly, this appeal is distinguishable from Order PO-2109 by virtue of the fact that the issues raised by [the appellant] in this appeal were not addressed in PO-2109. The specific exemptions on which [the appellant] relies were not argued or considered in PO-2109.

With respect to whether information requested consists of personal information as defined by the *Act*, the appellant submits:

> [The appellant] concedes that the information requested, namely the unit numbers and addresses of the units subject to applications for eviction, constitute personal information [of the tenants] as defined in section 2(1) of [the *Act*].
>
> The landlord's name has also been requested, but not the landlord's address, telephone number, or other information. The name of the landlord alone is not 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 case/file number for all active eviction 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 address information included in the record includes unit number, street address, city and postal code.

In its 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 information still includes the addresses of the parties, and addresses are considered personal information under clause 2(1) of [the *Act*]. These addresses still allow you to contact tenants at their homes, even without their names (for example, by addressing a letter to the "occupant"). Given that this contact would be initiated based on your knowledge that they are subject to applications to terminate their tenancies, I believe contacting them in that manner would constitute an unjustified invasion of personal privacy pursuant to section 21 of [the *Act*].

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 the eviction application. 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 eviction applications consist of "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 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 name of a tenant, when included on a Tribunal eviction 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, and is not seeking access to the names of tenants.

However, the request does include the names of landlords that appear on the forms.

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.

Disposition data

The Tribunal describes the disposition data contained in Record 2 as follows:

> The disposition data previously given to the appellant … (before the MOU for providing the data was cancelled) included the date the order was issued, the resolution method (for example, default order, hearing order, review order, mediated, etc.). It also included information about findings made in the order that were recorded on *Caseload* [the Tribunal case management system] (such as the amount of arrears of rent ordered). There are a number of fields in the *Caseload* file that members can use to record the findings they set out in their order. These findings could be information such as whether the member granted termination of the tenancy, and if so, the eviction date, whether other amounts were ordered, etc. However this type of information was included in the post disposition report provided to the appellant if the member had added it to *Caseload*. If the member did not do so, these fields, would have been blank on the report in the line for the application file in question.

With names of tenants and specific address unit numbers removed, in my view, there is nothing inherently personal about the disposition data that would bring it within the scope of the

definition of "personal information" in section 2(1) of the *Act*. Accordingly, the disposition data should be provided to the appellant.

Other information

The other requested information consists of the application filing date and the type of 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 date and the type of application.

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 unit number component of the address listed on the eviction 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, application filing date, type of application and disposition data contained in the requested records does not qualify for exemption and should be disclosed to the appellant.

PERSONAL PRIVACY

General Principals

The only category of information I will consider under the personal privacy exemption is the unit number component of the address information contained on the eviction application forms.

Section 21 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. The appellant submits that section 21(1)(f) applies in this case. That section 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 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.

Section 21(1)(f) and the factors listed under section 21(2)

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.

Factors weighing in favor of disclosure

Section 21(2)(a): public scrutiny

The appellant takes the position that disclosing the requested information is desirable for the purpose of subjecting the activities of the government of Ontario and its agencies to public scrutiny. The appellant submits, in part:

> The [*Statutory Powers Procedure Act* which] ensures the openness of court proceedings applies equally to administrative tribunals. This openness is vital to ensure that tribunals, which are responsible for adjudicating a large number of disputes in a wide range of areas, do not produce secret law.
>
> Applications for eviction, once filed with [the Tribunal], become part of the public record. The public may attend hearings, listen to the evidence presented, which includes the names and addresses of the individuals residing in the unit for which the application has been brought and have access to the decisions made. The reasons for ensuring that the proceeding, which includes the applications and all the information contained within them, are public, is to ensure that [the Tribunal] exercises its powers and functions in a manner that is open, transparent and accessible to the public.
>
> It has long been recognized that in democratic societies, bodies exercising a judicial function must be open to public scrutiny to ensure that justice is not only done, but can clearly be seen to be done. One way of doing this is to ensure that the public has access to the information contained in [the Tribunal's] files. This openness and transparency is the only real means of assessing the conduct and policies of [the Tribunal] and permitting public scrutiny of its law making.

I agree with the appellant 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 the appellant characterizes 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 unit numbers of apartment buildings that are involved in eviction proceedings, which is the only information under consideration here, must be made available to an individual who is not a party to those proceedings 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 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 unit numbers in apartments subject to eviction 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 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 a direct correlation between access to the information sought by [the appellant] and the promotion of public health and safety.

The appellant submits that "keeping tenants housed promotes public health and safety as, the alternative of homelessness creates a very real personal risk to health and safety." The appellant submits that those risks include:

- Children who are homeless face a greater risk of being apprehended by the CAS then children who are housed.

- Children who are homeless suffer serious long-term effects relating to health, ability to perform at school and the ability to socialize and make friends.

- People who are homeless face serious health concerns.

The appellant also points to the success of its "eviction prevention program" as evidence that eviction rates for tenants are reduced when organizations like the one operated by the appellant, which provide legal assistance to tenants, are in a position to contact tenants prior to eviction hearings.

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 unit numbers of apartments whose residents are subject to eviction 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 apartment unit numbers contained in the records.

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

The appellant argues that disclosing the requested information would promote informed choice in the purchase of goods and services:

> [The appellant's] eviction prevention program is specifically designed to educate individuals about their rights under the [*Tenant Protection Act*] and to provide them with information to allow them to make informed choices about whether to defend against the eviction applications made against them.
>
> Although the information provided by [the appellant] does not promote the purchase of goods and services, *per se*, it allows individuals to become informed consumers of government services and to have their rights adjudicated by [the Tribunal].

Again, I am not persuaded that disclosing unit numbers of residential buildings occupied by tenants who are the subject of an eviction application would "promote informed choice in the purchase of goods and services". Clearly, parties to an eviction application 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 tenant, 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 advertise and 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 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:

> [The appellant] acts as an intermediary for the individuals to whom the information pertains. The role that [the appellant] plays is a critical role in the fair and just administration of justice to low-income individuals, many to whom are members of historically disadvantaged groups, who without [the appellant's] intervention are unlikely to defend eviction applications or receive a fair determination of their rights.

The appellant also submits:

> Tenants with low incomes 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 their way through the process or get the help they require. Tenants benefit from [the appellant's] eviction prevention program which actively seeks them out and offers information to them. [The appellant] is unable to provide this service in the absence of the information requested and the effects of this gap in service will be an increase in evictions.

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's organization acts as agent to tenants defending eviction applications before the Tribunal, its request under the *Act* was not made in the capacity of an agent 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 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 unit number of apartments whose residents are subject to eviction 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 unit numbers would constitute an unjustified invasion of the privacy of tenants residing in these units. Therefore, the unit number contained on the eviction application form qualifies 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 unit numbers?

The appellant submits that there is a compelling public interest in preventing the evictions of low-income individuals from their homes:

> … The disclosure of the information requested will serve the public interest by permitting [the appellant] to continue its eviction prevention program and provide information and assistance to low-income families facing eviction applications from their landlords.

The appellant submits that, once the landlord files an application for eviction the Tribunal does not notify the tenant directly that eviction proceedings have been commenced. Instead, the landlord is responsible for providing notice of the application to the tenants. According to the appellant, many tenants never receive a copy of the Notice of Hearing from their landlords and therefore are unaware that eviction proceedings have been initiated against them. The appellant also points out that the Notice of Hearing form may be difficult for some tenants to understand.

The appellant describes why its services help promote a public interest:

> The individuals targeted by [the appellant's] eviction prevention program are low-income families, many of whom are from historically disadvantaged groups in society. [The appellant] targets these individuals because they are members of groups who often have the most difficult time accessing information about their legal right and their rights as tenants. These individuals are frequently unaware that they have the right to be free from discrimination in accommodation and that these rights are protected under the Ontario *Human Rights Code*. As a result, in the absence of information about their rights and the means available to exercise them, these low-income tenants are vulnerable to abuses of the law by landlords, and are at risk of falling through the cracks in the system.
>
> [The appellant] also provides this service to tenants because of its commitment to promoting the equality rights of those who are disadvantaged in society. These are important protections, which are guaranteed to all Canadians in our human rights legislation and in sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. Housing is fundamental to our abilities to be safe and secure. To have any chance of achieving equality in accommodation, tenants must be educated about their rights and given the opportunity to exercise those rights to allow them to remain in their homes.

The appellant goes on to describe in detail what it sees as the societal cost of tenant evictions, including those resulting from default orders frequently tied to the absence of notification by landlords. It also points to the financial pressure created on tenants who are evicted and forced to find alternative housing in a tight housing market.

The appellant also submits:

> A critical part of preventing eviction is through programs such as those run by [the appellant]. In order to run these programs, [the appellant] requires access to the information it requested from [the Tribunal]. If released, [the appellant] will use this information to contact tenants directly to provide them with information and assistance with respect to resources available to them should they wish to contest the applications. This information is crucial if tenants are to be given an opportunity to be educated about and exercise their legal rights in the eviction process, and in helping them to remain in their homes.
>
> The information sought by [the appellant] is only used for the sole purpose of contacting tenants to prevent unnecessary evictions. It is not used for the benefit of any other party. [The appellant's] use of the information is done to benefit tenants and in the interests of the public by preventing homelessness. The eviction prevention program helps prevent homelessness and saves government

> resources, as well as helping tenants to avoid the stresses of eviction and financial costs of finding new housing.

The appellant has provided detailed and comprehensive submissions on the impact of the current regime for dealing with landlord-tenant disputes under the *Tenant Protection Act*. It also details what it perceives as the inequities relating to the processes governing the operation of the Tribunal. Many 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 eviction application has been filed by their landlord, which results in a high number of default orders that disproportionately impact low income or disadvantaged tenants who do not have the means or the necessary information to ensure that their interests are protected. The appellant is not alone in expressing these concerns. It makes reference to a number of other individuals and organizations that have voiced similar concerns, including legal aid clinics and academics. The appellant also points to submissions made to the Mayor of the City of Toronto 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 unit number component of the address of residences housing tenants who are the subject of eviction 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 accept that the appellant's submissions 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 unit numbers contained on the eviction 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 unit number 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 unit

numbers of residential apartments housing tenants involved in eviction 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 unit component of the address information contained on the eviction application forms.

2. I order the Tribunal to disclose to the appellant the other requested information contained on the eviction application forms, 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