



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1933

Appeal MA-040358-1

City of Windsor



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NATURE OF THE APPEAL:

The City of Windsor (the City) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to the following:

Complete contact information (owner, business address, business phone) of businesses that have been issued refreshment vehicle licenses (i.e. coffee trucks, hot dog vendors, etc.) by the City of Windsor.

The City located a list containing the names and addresses of 151 such licensees. The City granted partial access to this record, withholding those portions that it felt contained the personal information of identifiable individuals within the meaning of section 2(1) of the Act. The City claimed that the records contained personal information that was exempt from disclosure under the mandatory exemption in section 14(1) of the Act (invasion of privacy).

The requester (now the appellant) appealed the decision. In his letter of appeal, the appellant argued that the information sought is business information and does not meet the definition of personal information under section 2(1). Accordingly, he submits that this information cannot qualify for exemption under section 14(1). During the adjudication of the appeal, the City agreed to disclose to the appellant the names of the individual license holders listed on the record but not their addresses. It maintained its position that this information is the personal information of the license holders within the definition of that term in section 2(1)(d).

The City's decision to disclose the names did not resolve the appeal, however. I sought and received representations from the City, through the issuance of a Notice of Inquiry. I then provided the appellant with a copy of the Notice, the City's representations and three recent decisions of the Commissioner's office. The appellant also provided me with submissions which I then shared with the City, who filed additional submissions by way of reply.

RECORDS:

The record at issue consists of a six-page list of licensees including their names and addresses. The undisclosed information in the record consists of the addresses of those licensees who are natural persons, as opposed to corporations or other business entities.

DISCUSSION:

PERSONAL INFORMATION

General principles

The City takes the position that the undisclosed portions of the record contain the personal information of the licensees. As a result, the City claims the application of the exemption in section 14(1) to this 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 where 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].

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].

In Order PO-2225, former Assistant Commissioner Tom Mitchinson made the following comments respecting the distinction between information that qualifies as “personal information”

under section 2(1) and information that relates to an individual in his or her “business capacity”. He split the analysis into a two-step process, first asking:

. . . “*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?

The second step of the analysis undertaken by the former Assistant Commissioner is to examine:

. . . *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?

I will apply the analysis described above in my examination of the personal information/business information distinction in the present appeal.

The representations of the parties

In support of its contention that the addresses of the non-corporate license-holders are the “personal information” of these individuals within the meaning of section 2(1)(d), the City submits:

The address and telephone number of the non-corporate individuals is also information ‘about’ the individual because it identifies information inherently of a personal nature about the individual and not only the fact that this individual is the owner of the specified license. The information sought goes further than that contemplated in Orders MO-1858, MO-1862 and PO-2225. Those Orders authorized the release of *names* because they reveal information of a business, not of a personal nature. Identification of non-corporate addresses and telephone numbers is information of a personal nature going beyond business information. Although the address and telephone [number] may be utilized by the individual for business purposes, (i.e. dual purpose) in addition to its personal nature, it is submitted this does not justify taking it out of the sphere of personal information warranting its release. It remains information of an inherently personal nature.

The City refers to the record containing both addresses and telephone numbers relating to the licensees. I have examined the record and confirm that it does not include the licensees’ telephone numbers.

With respect to the first part of the analysis described by former Assistant Commissioner Mitchinson in Order PO-2225, the appellant submits:

. . . The City has no basis to divine that the information is personal, nor has it provided any evidence to support that the information is personal in its

representations. Non-corporate entities (sole proprietorships, partnerships) are still businesses. In Order PO-2225, Assistant Commissioner Mitchinson indicated that though he 'accepts that there are differences between the individual homeowner and a large corporation that owns a number of apartment buildings...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.' This clearly applies to the case here.

The businesses that applied for refreshment licenses provided their address and phone number information for use in the context of applying for a business purpose. The licensed businesses clearly expected correspondence of a business nature to the addresses and phone numbers that they provided (i.e. receipt of business license).

The appellant also refers to an extract from the decision of former Assistant Commissioner Mitchinson in Order MO-1862 in which he stated that, "As a general rule, information associated with an individual in a professional, official or business capacity will not be considered 'about' the individual." The appellant contends that, "[I]f the names of individuals representing the businesses are not of a personal nature, then by extension, the business contact information is not personal either."

With regard to the second aspect of the analysis under the test enunciated in Order PO-2225, the appellant argues that:

. . . all the applicants to the City of Windsor were seeking a business license. It stands to reason that none of the applicants were seeking the business license in a 'personal' capacity.

Even if the address serves a dual role (i.e. a home based business), Order PO-2225 cites Order M-454 where the Adjudicator found that the 'address that was both the business and residential address of that owner was not personal information.' Though the decision for Order PO-2225 does not speak to the issue of whether the addresses should be provided (the appellant withdrew that request prior to adjudication), Assistant Commissioner Mitchinson did provide some guidance:

. . . it may nevertheless be helpful to observe that because the names of the non-corporate landlords in these records do not qualify as 'personal information', other information about them or similar landlords that is compiled in the same business context could also fall outside the scope of the definition of 'personal information' for the same reasons.

The appellant also relies on the reasoning of Adjudicator Bernard Morrow in Order MO-1862 where he found that the name of a taxicab license-holder does not constitute that individual's personal information.

In its reply submissions, the City states that the inherent nature of the businesses for which licenses were obtained in the present circumstances, specifically refreshment vehicles, is "mobile and transient" and cannot be carried on in one location. The City also relies on the decision in Order PO-1893 in which I found that the home addresses of the owners of certain mining leases constituted the personal information of the leaseholders. Addressing the second part of the test enunciated by the former Assistant Commissioner in Order PO-2225, the City submits:

. . . [the City] is constantly required to evaluate information and balance interests. At what instance does the information of private individuals cross the threshold of being personal and become business, professional or official government. In the event it has crossed that threshold, does it reveal something that is personal in nature? If yes, it may be withheld. It is Windsor's position that an address of an individual, even in the case of an individual who is operating a business, has not crossed that threshold, or if it has, continues to reveal something of a personal nature and should [not] be withheld and [the] reasoning in PO-1893 should be followed.

Findings

In Order M-454, Senior Adjudicator John Higgins analyzed the early jurisprudence of the Commissioner's office respecting the difference between information that related to an individual in their business, as opposed to their personal, capacity as follows:

Many previous orders have held that information about businesses, including partnerships and sole proprietorships, does not qualify as personal information. For example, in Order 16, former Commissioner Sidney B. Linden made the following comments in this regard:

The use of the term "individual" in the *Act* makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the legislature intended "identifiable individual" to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

Former Commissioner Linden went on to state in Order 113 that:

It is, of course, possible that in some circumstances, information with respect to a business entity could be such that it only relates to an identifiable individual, that is, a natural person, and that information might qualify as that individual's personal information.

...

In this appeal, the information pertaining to the business consists of the name, address and telephone number of the kennel, the name of one of the operators of the kennel, and information about an incident which occurred in the course of conducting the business of the kennel. In my view, this information relates to the ordinary operations of a business. . . Because of the nature of the information relating to the kennel business which appears in the record, I find that it does not fall within the category of information contemplated by former Commissioner Linden in the passage just cited from Order 113.

With regard to the address and telephone number, the Police's representations indicate that the owner objected to disclosure of this information at the request stage on the basis that the address is also her home address. It has been previously held that, even where a request relates to business activities, the home address of an individual engaged in business is personal information (Order M-39). However, in my view, the situation is quite different where the home address is also the address of the business, particularly where (as in this case) the activities of the business relate to the subject matter of the request.

In the present case, the addresses contained in the record were provided by the license applicants to the City as information that relates to their business activities. In addition, I find that the request itself specifically seeks access and relates directly to the home addresses of the license applicants.

More recently, in Order PO-2225 former Assistant Commissioner Mitchinson set out a similar approach to the treatment of information that relates to a business entity, regardless of whether it represents a corporation, a partnership or a sole proprietorship. As noted above, he set out a two-step approach when undertaking an analysis of whether information relates to a business entity, in that case the operation of rental accommodation for residential purposes, or whether it constitutes "personal information" for the purposes of section 2(1). In Order PO-2225, the information at issue consisted only of the names of certain individuals who owned rental premises, and did not include their addresses.

The first part of the test requires an examination of the context in which the information appears. In the present appeal the addresses of the individuals were provided by the applicants as part of the process of obtaining a license to operate a refreshment vehicle. In my view, the operation of a refreshment vehicle, regardless of its sophistication or the range of goods sold, is a commercial enterprise undertaken with a view to making a profit. The operation of a refreshment vehicle represents, in my view, a profit-making enterprise designed to earn a profit. As such, I find that it represents a business undertaking and is not, strictly speaking, related to the individuals' personal lives.

Accordingly, I find that records created in the course of following the steps necessary to allow one to carry on a business of this sort, including obtaining the license required, is part of the commercial activity that forms part of the carrying on of a business. In my view, information such as the address of the license-holder, is provided to the City in order to ensure that the license necessary to operate the business is obtained. I find that the address information provided by the license applicant relates to the business operation and the individual applicant in situations where the information represents a home address.

In Order PO-2225, former Assistant Commissioner Mitchinson then described a second step in the process of determining whether information that relates to a business entity may also qualify as the personal information of the individual to whom it relates. He set out this process as follows:

. . . 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?

Following the approach set out in Order PO-2225, I find that the disclosure of the applicants' addresses would reveal that:

1. the license holder has provided the City with information that he or she carries on business at a certain address, which may or may not be his or her home address;
2. the information was provided in the context of an application for a license to carry on a specified business activity within the City; and
3. the actual operation of the business itself is not carried on at the address of the applicant provided to the City. The businesses are transient in nature and are conducted on local streets as opposed to being located at a fixed address.

In my view, the address was provided to the City only for the purpose of obtaining the necessary license. I find that because the business is not conducted out of the applicants' homes, the home retains its character as primarily a residence, as opposed to being the location of a business operation. While the home address may be used for some business purposes, such as bookkeeping or the storage of business equipment, I find that it retains its primary character as a residence and cannot be considered to be a business premises for the purpose of assisting in the determination of whether the address information is inherently personal in nature.

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 addresses of non-corporate licensees - is "about" those individuals in a personal capacity, and thereby qualifies as "personal information" as that term is defined in section 2(1) of the *Act*. In my view, there is something inherently personal about a home address in the circumstances of this appeal, particularly as the businesses operated by the license holders are not carried on at these locations.

INVASION OF PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. In the circumstances, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be “an unjustified invasion of privacy under section 14(1)(f). If any of paragraphs (a) - (b) of section 14(4) apply, the information is not exempt under section 14. If any of paragraphs (a) - (h) of section 14(3) apply, the disclosure of the information is presumed to constitute an unjustified invasion of personal privacy under section 14(1). [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

The City submits that the information contained in the record was provided to it by the license applicants with an expectation that it would be treated confidentially, bringing into play the factor listed in section 14(2)(h). The appellant argues that the City has not provided any evidence to substantiate this claim and that “it could equally be inferred that the businesses are more than willing to share their information if it provides opportunities for networking with similar businesses which could further their interests”, thereby raising the application of the consideration listed in section 14(2)(c).

I find that the consideration listed in section 14(2)(h) is a relevant factor favouring privacy protection. Considering the circumstances surrounding the provision of the address information by license applicants, I find it reasonable to expect that the personal information was supplied with an expectation that it would be treated in confidence, as contemplated by section 14(2)(h). However, owing to the fact that the information was provided in furtherance of a license application, I find this to be only a relatively insignificant consideration favouring the non-disclosure of this information.

Similarly, I find the consideration referred to by the appellant relates to the “promotion of informed choice in the purchase of goods and services” under section 14(2)(c). The appellant seeks to obtain access to the information sought in order to promote a trade association and not to assist in the promotion of informed choice in the purchase of goods and services, as contemplated by section 14(2)(c). Accordingly, I find that this factor is not applicable in determining whether disclosure would constitute an unjustified invasion of privacy under section 14(1)(f).

I conclude by finding that although the consideration in section 14(2)(h) has relatively little weight when balancing the appellant's right of access against the licensee's right to privacy, it outweighs the factor in section 14(2)(c), which I found is not applicable. Therefore, in my view, the disclosure of the personal information in the record, the addresses of the licensees, would constitute an unjustified invasion of their personal privacy and the personal information is exempt under section 14(1).

ORDER:

I uphold the City's decision not to disclose the license applicants' addresses.

Original Signed By: _____

June 9, 2005 _____

Donald Hale
Adjudicator