



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2372**

**Appeal PA-020093-1**

**Ontario Rental Housing Tribunal**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Ontario Rental Housing Tribunal (the Tribunal) under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to all records pertaining to a named individual landlord (the affected person) and filed with the Tribunal.

The appellant is a former tenant who rented one of the affected person's properties. The affected person currently has a case against the appellant in small claims court. The appellant is seeking the information in the records to prepare for that proceeding.

Initially, the Tribunal issued a decision refusing to confirm or deny the existence of any such records on the basis that doing so would constitute an unjustified invasion of privacy. The appellant appealed this decision.

During mediation, the Tribunal issued a revised decision, confirming that nine files containing a variety of documents were responsive to the request. The Tribunal noted that the appellant was a party to the proceedings in two of these files. The appellant confirmed that he already had these records and did not require access to them.

The Tribunal then denied access to the records in the remaining seven files on the basis that section 21(1) (invasion of privacy), with specific reference to the presumption in section 21(3)(f) (financial information) applied.

At this point, the Mediator notified the affected person of the request and asked for her position regarding disclosure of the records to the appellant. The affected person objected to the disclosure of any of the records at issue.

Further mediation could not be effected and this appeal was forwarded to adjudication.

This office sent a Notice of Inquiry to and sought representations from the Tribunal and the affected person initially. Both the Tribunal and the affected person submitted representations in response.

This office then sent the Notice of Inquiry to the appellant seeking representations. The appellant was provided with the non-confidential portions of the Tribunal's representations and a summarized account of the affected person's representations. The appellant also provided representations.

While this appeal was being processed, former Assistant Commissioner Tom Mitchinson issued a number of orders relating to the Tribunal that would have implications for this appeal (Orders PO-2109, PO-2225, PO-2265, PO-2266, PO-2267, PO-2268, PO-2269 and PO-2347). Consequently, this office sought representations from the appellant, the Tribunal and the affected person on the application of these orders. Only the affected person provided representations.

## **RECORDS:**

The records at issue consist of seven application files, each one relating to a separate application involving the affected person and other individuals (tenants).

I have assigned a record number to each application file. Records 1, 4 and 7 are all files commenced by tenants about tenant rights. Records 2, 3, 5 and 6 are all files commenced by the affected person to terminate the tenancies of the various tenants.

The files are similar to each other, and for ease of reference each one contains:

- Application forms
- Mediator Reports including the agreement between the parties
- Administrative Documents i.e. Notices of Hearing, Records of Transaction, Certificates of Service, Scheduling Data Sheets, Hearing Attendance Records, Summonses, Notices of Review Hearing, Transcription Forms
- Orders
- Copies of photographs

## **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 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 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 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].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

### **Previous Orders Regarding Access to Tribunal Records**

Former Assistant Commissioner, Tom Mitchinson decided a number of appeals with the Tribunal relating to the issue of whether certain types of information are considered "personal information". Orders PO-2225, PO-2265, and PO-2267 are particularly relevant to the records at issue and I will review them here.

#### PO-2225

In Order PO-2225, the information at issue consisted of names of non-corporate landlords on two reports prepared by the Tribunal: the Accounts Receivable Report and the Outstanding Debt List. The Assistant Commissioner set out the following two-step process in deciding that the names of "non-corporate" landlords were "about" those individuals in a business rather than a personal capacity, and therefore did not constitute their personal information.

...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.

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?

The Assistant Commissioner then applied the two-step process to the record at issue as follows:

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*.

#### PO-2265

In Order PO-2265, the Tribunal record at issue was a report titled “Cases in a Hearing Block with Party Names”. The requester in that appeal was interested in the following particular information:

- 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

In regard to this information the Assistant Commissioner made the following 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.

...

***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.

#### PO-2267

In Order PO-2267 one of the records at issue consisted of a quarterly report containing the disposition data of eviction applications that had already been heard by the Tribunal. In regard to the disposition data in the record, the Assistant Commissioner found the following.

The Tribunal describes the disposition data ... 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.

For the purposes of the current appeal, I will apply the approach articulated by the former Assistant Commissioner in the orders referred to above.

#### **Representations**

Both the affected person and the Tribunal submit that the application files contain personal information as defined by section 2(1) of the *Act*. The Tribunal states:

The application files at issue in the appeal relate to disputes brought before the Tribunal between the affected individual (who is a landlord renting a small number of rental units) and various tenants. These disputes are highly contentious and involve allegations of money owing, invasion of privacy, failure to meet obligations, harassment and threats. The Tribunal submits that this information meets the definition of section 2(1).

The Tribunal further submits that the information pertaining to the affected person is personal rather than professional or business information. The Tribunal states:

The affected person in this appeal is merely an individual who rents a small number of rental units. In doing so, she is acting as an individual, not as an employee of a corporate landlord, or as a representative of an organization. Nor is she acting in a “professional capacity” such as an individual acting in their capacity as a doctor or a lawyer.

In response, the appellant submits that he is not interested in the personal information of the affected person. He states that he is looking for:

...relevant information about the reasons that applications were made with the [Tribunal]. The contents of the files that the appellant requests pertain only to the reasons and explanations of the applications that has been filed by either the landlord or tenant. The appellant is not asking the [Tribunal] to disclose personal information about the affected party.

### **Analysis and findings**

All the records contain information relating to tenants, the affected person and other individuals (specifically witnesses at the hearings). The first issue to be addressed is whether this information is personal information for the purposes of section 2(1) of the *Act*.

For the purpose of my analysis, I have divided the information at issue into five categories:

1. information relating to other individuals;
2. information relating to the tenants;
3. information relating to the affected person,
4. information relating to both the tenants and the affected person and
5. photograph information

#### Information relating to other individuals

Records 3, 4, 6 and 7 contain information relating to other individuals.

Records 3 and 4 contain information pertaining to police officers who were summoned to be witnesses at the hearings relating to these particular applications. The records contain the police officers' names, addresses, badge and phone numbers. As stated above, information related to an individual in their professional or official capacity is not considered "about" an individual for the purposes of section 2(1) of the *Act*, and I find that this information is not personal information within the definition of the *Act* and should be disclosed to the appellant.

Records 4, 6 and 7 contain the names of various individuals and the word "witness". Records 6 and 7 contain the name of the appellant who also appears to have been a witness at the hearings for each of these files. As there is no further reference to whether the individuals or the appellant were acting in a personal or professional capacity as witnesses, I find that the individuals and the appellant's names on the Hearing Attendance Record are their personal information (paragraph (h) of the definition of "personal information" in section 2(1)).

#### Information relating to the tenants

The information at issue relating to the tenants includes their names, telephone numbers, sex, and their specific allegations about the affected person. The allegations made by the affected person against the tenants are also included in this information. I will deal with the tenants' non-financial allegations about the affected person in the discussion below under the heading, "Information relating to the affected person".

In Order PO-2265, set out above, the Assistant Commissioner found that the names of tenants within the context of the Tribunal application form were considered personal information. I agree. In the application files in the current appeal, disclosure of the tenants' names would indeed reveal the fact that the tenants were in a dispute with his/her landlord and are personal information (paragraph (h) of the definition of "personal information" in section 2(1)).

The tenants' other information is also their personal information, specifically the tenants' sex and phone numbers (paragraphs (a) and (c) of the definition of "personal information" in section 2(1)).

Records 3 and 7 also contain a tenant's address that is different from the address of the rental accommodation. I find that this tenant's address is personal information under paragraph (d) of the definition of "personal information" in section 2(1).

The allegations made by the affected person about the tenants' actions, behaviour, and rent and any other money owing are also personal information within paragraph (b) (information relating to financial transactions in which the individual has been involved) and paragraph (g) (views or opinions of the affected person about the tenants) of the definition of "personal information" in section 2(1).

Records 1, 4 and 7 are all applications that were commenced by tenants. In the application forms in these files, there is a section on the application form where tenants are able to request the

remedies they expect from the Tribunal. In this section, tenants can set out their requests for compensation from the landlord and their reasons for requesting the compensation. This part of the application form contains financial information from the tenants including: rent paid and owed, and other expenses that the tenant may have incurred in relation to the rental property. I find that this information is the tenants' personal information under paragraph (b) of the definition of "personal information" in section 2(1).

Accordingly, I find that the tenants' names, phone numbers, address, sex, financial transaction information and the allegations made by the affected person about the tenants are all considered personal information for the purposes of this appeal.

#### Information relating to the affected person

In this appeal, the information relating to the affected person includes her name, address, phone number, and the allegations made against her by the tenants.

In Order PO-2225, set out above, the Assistant Commissioner laid out the two-step process in making his determination that the names of "non-corporate" landlords were "about" those individuals in a business rather than a personal capacity. The two-step approach described above has since been applied by this office in Orders MO-1858 and MO-1862, and I will adopt it here for the purposes of determining whether the information relating to the landlord qualifies as personal or business related information.

None of the parties provided representations on the application of the two-step approach.

#### ***Names, address and phone number***

The first question to ask is in what context does the affected person's name, address and phone number appear?

The records at issue are Tribunal application files, the affected person's name, address and phone number are all set out in relation to her rental arrangement with the tenant. As the Assistant Commissioner stated in order PO-2225, "...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." Accordingly, I find that the affected person's name, address and phone number appear only in the business context of providing accommodation to the tenant for rental income.

The next question to ask is whether there is something about the particular information at issue, which if disclosed, would reveal something of a personal nature about the individual. In this case, the only information that would be revealed by disclosing the affected person's name, address and phone number is the following:

- the individual is a landlord

- the individual carries on business at a specific address and can be contacted at a specific phone number
- the individual was in a dispute with her tenant that was heard before the Tribunal.

I find that there is nothing inherently personal about the fact that the affected person carries on business at a certain address, or can be contacted at a specific phone number. Moreover, the fact that the affected person is in a dispute with her tenant is not something that relates to the affected person's "personal life" but is rather concerned with her business activities as a landlord. As such, I find that in the circumstances of this appeal, the affected person's name, address and phone number do not qualify as her personal information.

### ***Allegations about the affected person***

Records 1, 4 and 7 are all application files commenced by tenants.

Each of these files includes an application form in which the tenant is asked to provide his or her reasons for commencing the application. The application form lists a number of reasons for making the application and the tenant is asked to place a check mark in the boxes next to the reason or reasons that apply to his or her case. Each of these "listed reasons" pertains to a specific provision in the *Tenant Protection Act*.

There is also further space on the application form for the tenant to provide descriptions of what occurred.

The definition of "personal information" includes "the views or opinions of another individual about the individual" (section 2(1)(g)) and could potentially include the tenant allegations about the affected person. I must therefore decide whether the tenant allegations constitute the personal information of the affected person.

As stated above, even if information relates to an individual in his or her business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.

The tenant allegations all relate to the affected person's perceived actions or failure to act in some way in regard to the rental accommodation. Using the two-step approach mentioned above, the first question to be asked is in what context does the information appear? Once again, the tenant allegations about the affected person appear in the Tribunal's application form that is used to commence the Tribunal's dispute resolution process. The Tribunal's dispute resolution process only relates to landlords and tenants and as such, the tenant allegations about the affected person appear in the context of the business arrangement between the tenant and the affected person.

The next question to be asked is whether there is something about the particular information (tenant allegations) that, if disclosed, would reveal something of a personal nature about the affected person.

In regard to the pre-printed reasons listed on the Tribunal's application form, I am unable to find that disclosure of the pre-printed reasons along with the check marks next to them would disclose something personal about the affected person. As I stated above, the pre-printed reasons on the Tribunal's application form all relate to provisions in *Tenant Protection Act* that set out landlords' responsibilities and duties. These pre-printed reasons pertain to landlords as a group and the disclosure of these reasons would not disclose anything personal about the affected person in this appeal.

On the other hand, I find that disclosure of the tenant's explanation of the reasons listed in the boxes on the application form and on separate pages in the records, would reveal something personal about the affected person. In the tenant's explanation, the tenant provides further details about the affected person's actions or inaction, and allegations about the affected person not relating to the rental property. Disclosure of this information would reveal details of the affected person's personal life that do not relate to the rental property but to the affected person as an individual. Without going into the details of the allegations, information relating to paragraphs (a), (b) and (g) of the definition of "personal information" in section 2(1) would be disclosed. Consequently, I find that this information is personal information for the purposes of section 2(1) of the *Act*.

#### Information relating to both the tenants and the affected person

##### ***Case/file number***

Each of records at issue is an application file relating to a particular rental property, landlord and tenant. Each file is designated a number by the Tribunal. In Order PO-2265, set out above, the Assistant Commissioner found that the file number is not personal information under section 2(1) of the *Act* because the parties to the application can not be identified from the file number.

I concur with the Assistant Commissioner's finding. The file numbers relating to each application file should be disclosed to the appellant.

##### ***Address***

All of the application files at issue deal with rental property at either one of two addresses. The rental properties are houses with basement apartments. None of the addresses contain unit or apartment numbers. Based on my understanding, the houses in their entirety, including the basement, were rented to the various tenants.

While these addresses are specific to the tenant they are also the address of the affected person's rental property. In Order PO-2265, set out above, the Assistant Commissioner found that a

tenant would be identifiable from the address of the rental property combined with a unit number. However, the Assistant Commissioner also found that if the unit number was removed, the street address, city and postal code do not provide sufficient information to reasonably identify a specific tenant.

In the current appeal, the addresses of the rental properties do not contain unit numbers since the rental properties are houses. As the rental address is not specific to any one particular tenant, I find that disclosure of the address would not disclose personal information of an identifiable individual. As such the addresses are not personal information within the meaning of paragraph (d) of the definition of “personal information” in section 2(1) and as such should be disclosed.

### *Other information*

The other information that relates to both the tenant and the affected person includes the following:

- type of application file
- filing date and date, location and time of hearing
- disposition information

In Order PO-2265, set out above, the Assistant Commissioner found that the type of application file, the filing date, and the date, location and time of hearing were not personal information. I agree with the Assistant Commissioner that this type of information is not referable to identifiable individual and as such not personal information within the meaning of the *Act*.

The disposition information contained in the records includes: orders, mediator reports, decisions to review, and other reports relating to the outcome of Tribunal hearings.

In Order PO-2267, set out above, the Assistant Commissioner found that once the names and specific address unit numbers were removed from the disposition records and information, there was nothing inherently personal about the information remaining. I agree with the Assistant Commissioner’s finding. In the present appeal, once the tenants’ names have been removed from the records, I find that there is nothing inherently personal about the disposition information in the record that would relate to a particular tenant.

In regard to the affected person’s information in the disposition information, and using the two-step approach in Order PO-2225, the first question to be asked is in what context does the affected person’s name appear. And once again, as I have found earlier, I find that the affected person’s name appears in the business context of renting property for the purposes of income. The affected person’s name in the disposition data relates only to the rental arrangement between the landlord and tenants and the resolution of the dispute between them.

The next question to be asked is whether there is something about the disposition information that if disclosed would reveal something of a personal nature about the affected person. The

only information that would be revealed by the disclosure of the disposition information was that the affected person was in a dispute with a tenant, the nature of the dispute and then the resolution of the dispute. As stated above, the fact that the affected person is in a dispute with the tenant is not the affected person's personal information as the nature of the dispute relates to the rental agreement and property and not a personal dispute. The resolution of the dispute, which in this case is either the termination of the tenancy, a mediated agreement or an order to pay money all relate to the rental agreement and not out of a personal context. As such, I find that the disposition information is not the affected person's personal information within section 2(1) of the *Act*.

Consequently, I find that the disposition data, with the tenants' names removed, is not personal information and should be disclosed to the appellant.

### Photograph Information

Records 5 and 7 contain photographs. In Record 5, the photograph was provided by the affected person and shows a picture of an object. The object does not relate to an identifiable individual and as such I find that the photograph is not personal information.

In Record 7, the tenant provided the Tribunal with photographs in support of his application. The pictures include various views of the interior and exterior of the rental property. Several of the photographs also include handwritten descriptions from the tenant.

I find the tenant's handwritten descriptions to be his personal information (paragraph (e) of the definition of "personal information" in section 2(1)). When the descriptions are removed from the photographs of the rental property, the photographs do not relate to an identifiable individual and are not personal information.

### **Conclusion**

In summary, I find the following information falls within the scope of the definition of "personal information" in section 2(1):

- witness names
- tenant information (names, address, sex, phone numbers, financial transaction information)
- affected person's allegations about the tenants
- tenant allegations about the affected person detailed in the explanation portion of the application forms
- tenant descriptions on the photographs in Record 7

I find that the remaining information is not personal information for the purposes of the *Act*, and will order that it be disclosed.



## INVASION OF PRIVACY

### General principles

Section 21(1) of the *Act* prohibits the Tribunal from releasing “personal information” unless one of the exceptions in paragraphs (a) through (f) applies. In the affected person’s representations she consents to the release of Records 3 and 7 to the appellant so section 21(1)(a) may apply to the personal information at issue. The only other section that could apply is 21(1)(f). Further, the Tribunal submits that the presumption in section 21(3)(f) applies to some of the information at issue, and that the factors listed at sections 21(2)(e), (f) and (h) apply to the rest of the information at issue. The appellant submits that the factor listed at section 21(2)(d) applies in favour of disclosure of the information at issue. The relevant portions of section 21 read:

- (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
  - (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
  - (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
  
- (2) 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,
  - (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;
  - (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
  
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
  - (f) describes an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or

activities, or creditworthiness;

For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723].

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).

If none of the presumptions in section 21(3) applies, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

## **Representations**

The Tribunal submits that in the case of the information remaining at issue in this appeal, disclosure would result in an unjustified invasion of privacy. It states:

### **21(3)(f)**

A number of the files subject to this appeal include allegations of money owing by various parties involved...They also contain descriptions of circumstances in which the money came to be owing. The Tribunal submits that allegations of money owing, and descriptions of the circumstances that led to the allegations describe financial activities as contemplated by 21(3)(f).

### **21(2)**

The files subject to this appeal are either applications made by the affected person against her tenants, or applications made by the tenants against the affected person... The Tribunal submits that the information contained in these appeals is "highly sensitive" pursuant to 21(2)(f).

Various Information and Privacy Commission orders state that in order for information to be considered highly sensitive, the release of the information must be reasonably expected to cause excessive personal distress to the affected persons. In this case, the affected person has made it clear (for example, in her

letter to the mediator assigned to this appeal) that even the potential that the documents may be released in the future has caused her significant distress. She believes that the information contained in these files could potentially be used as part of a campaign to harass her.

It is reasonable to expect that the other individuals (the tenants) involved in these applications would also experience distress if they were to find out that the documents were to be released. As stated above, the circumstances leading to the applications were highly contentious and distressing to all concerned. As well, the properties subject to this appeal are quite small, and even if the names of the other parties were severed, it is conceivable that the requester could determine who these parties are and potentially find the means to contact them.

...

Section 21(2)(e) of the *Act* raises the issue of whether the disclosure of the information at issue would expose the affected individuals to pecuniary or other harm. The Tribunal is not aware of the intent of the appellant in this case; there may be no intent to cause harm whatsoever. The affected person, however, clearly believes that the information could be used to pursue a campaign of harassment against her...

Section 21(2)(h) is relevant to [Record 1] and [Record 2]. This section raises the issue of whether the personal information in question has been supplied by the individual to whom the information relates in confidence. These two files involve the same parties and were resolved together by a settlement mediated by the Tribunal. A copy of the Tribunal's Rule of Practice #11, "Mediation by the Tribunal" was attached to the Notice of Inquiry. This rule makes it clear that Tribunal mediation is a confidential process. As such, if an application was resolved by mediation, it would be reasonable for the parties involved to expect that information related to this file would remain confidential.

...

The affected person submits that the information in Records 1 and 2 are confidential as the dispute was mediated rather than resolved by hearing. She further submits that disclosure of Records 4, 5 and 6 would harm her small claims court case that she currently has against the appellant because the appellant would learn of her claim against him.

The appellant submits the following:

The appellant is requesting...relevant information about the reasons that applications were made with the [Tribunal]. The contents of the files that the appellant requests pertain only to the reasons and explanations of the applications

that has been filed by either the landlord or tenant. The appellant is not asking the [Tribunal] to disclose personal information about the affected party.

In June 2002 the affected person filed a claim against the appellant and his wife in small claims court...The appellant contends that the information in the applications filed with the [Tribunal] would prove that the affected person filed against the upper tenants, contradicting her explanation in small claims court documents. The appellant is concerned that allegations made against him by the affected person that "this information would be used for a campaign of harassment". The appellant and his wife are both members of good standing in their community. As a member of the teaching community the appellant's wife would not participate in any inappropriate or illegal behaviour that would affect her career or good standing...The appellant is seeking information that would assist in his defense.

The appellant also questions...that the information in this case is "highly sensitive". The [Tribunal] states the affected person has "indicated that the potential of these documents being released in the future has caused her significant distress". The affected person is the one who is suing the appellant and his wife...The appellant again questions the [Tribunal] position that the contents in the file he seeks is highly sensitive.

### **Analysis and findings**

#### 21(1)(a)

For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723]. In this case, the affected person, states explicitly in her representations that she is giving "permission" to release Records 3 and 7 relating to a particular tenant. The affected person's consent under section 21(1)(a) of the *Act* to disclose Records 3 and 7 to the appellant apply only to her personal information included in those records. I accept that section 21(1)(a) applies to this information and will order that it be disclosed.

#### Absurd Result

As stated above, part of the information withheld in Records 6 and 7 is information relating to the appellant, in particular the appellant's name and the word "witness". This office has applied the absurd result principle in situations where the basis for a finding that information qualifies for exemption under section 21(1) would be absurd and inconsistent with the purpose of the exemption (see Orders M-444, MO-1323). It has been applied in situations where the information was provided by the appellant or is clearly within the appellant's knowledge (MO-1196, PO-1679, MO-1755). Applied in this case, the name of the appellant and the fact that the appellant was a witness in the two hearings related to Records 6 and 7 would clearly be within

the appellant's knowledge. On an application of the "absurd result" principle, I find that section 21(1) does not apply to exempt the appellant's personal information.

21(3)(f)

I agree with the Tribunal that section 21(3)(f) applies to the some of the personal information at issue. The affected person's allegations about money owing by the tenant, and the tenant's allegations about money owing by the affected person all relate to the tenants' finances, liabilities, and financial history and activities. As a result I find that disclosure of this information would constitute an unjustified invasion of the tenants' personal privacy.

Factors under 21(2)

The Tribunal submits that section 21(2)(e) applies to the personal information relating to the affected person such that disclosure of the affected person's personal information may expose her unfairly to pecuniary or other harm. The affected person also appears to make this allegation. I do not accept the Tribunal or affected person's allegations that the appellant is pursuing a campaign of harassment against the affected person such that the appellant poses a threat of physical harm to the affected person. The affected person and the Tribunal have provided me with nothing more than their assertion that the appellant may engage in this behaviour.

Furthermore, I do not accept the affected person's submissions that disclosure of the personal information would expose her unfairly to pecuniary harm. The affected person suggests that disclosure of the information at issue will negatively affect her small claims court action against the appellant. I do not agree that this involves the factor in section 21(2)(e). As the affected person is the plaintiff in the small claims court proceeding, any decision for pecuniary compensation made against her by a court could not be deemed to be unfairly exposing her to pecuniary harm. Thus, I find that section 21(2)(e) as a factor weighing against disclosure does not apply in the circumstances.

Both the Tribunal and the affected person submit that the factor in section 21(2)(f) applies in favour of non-disclosure of the personal information remaining at issue. As stated by the Tribunal, past orders of this office have found that in order for this factor to apply, it must be found that disclosure of the information could reasonably be expected to cause excessive personal distress to the subject individual [Orders M 1053, P 1681, PO-1736]. The Tribunal and the affected person both allege that disclosure of the information would cause the tenants and the affected person excessive personal distress.

From my review of the records, I accept that disclosure of some of the personal information at issue relating to the affected person and the tenants would cause excessive personal distress. The allegations made by both the tenants and the affected person relate to incidents and actions that go beyond issues surrounding the rental property. Disclosure of this personal information would

cause both the affected person and the tenants excessive personal distress. As such, I find that the section 21(2)(f) factor weighing against disclosure applies in this appeal.

The Tribunal and the affected person also submit that the factor at section 21(2)(h) applies in favour of non-disclosure relating to the personal information in Records 1 and 2. As stated above, section 21(2)(h) relates to personal information that was supplied in confidence. The Tribunal and the affected person submit that two of the files (Records 1 and 2) were resolved by a mediated settlement and as such any information submitted by the tenants and the affected person in these files would have been submitted in confidence. The Tribunal supports its position by providing a copy of Rule 11 of its Rules of Practice, which deals with "Mediation by the Tribunal". Sections 11.17 and 11.18 of Rule 11 deal with the "Confidentiality of the Mediation Process" and states the following:

Anything said in a Tribunal mediation and any offer to settle the application will be confidential and, where no agreement is reached, may not be used by one party against another in the same or any other proceedings.

Except where an agreement is a partial settlement or where the application is re-opened, copies of any agreement are confidential and:

- (a) are the property of the parties; and
- (b) any signed copy which has come into the possession of the Mediator will be returned to the parties or destroyed.

I accept that the tenants and the affected person in Records 1 and 2 would have had an expectation that the personal information they supplied for the purposes of mediating their dispute would be held in confidence because the Tribunal's rule on the confidentiality of mediation. Thus, I agree and find that the personal information in Records 1 and 2 were supplied by the tenants and the affected person in confidence and as such find section 21(2)(h) as a factor weighing against disclosure applies. I want to emphasize that I am not finding that these two records should be found exempt under the *Act* because of the Tribunal's Rule 11; I am only finding that the expectation of confidentiality arising from Rule 11 is a factor that I should consider as weighing against disclosure of the personal information contained in Records 1 and 2.

The only factor weighing in favour of disclosure that may possibly apply is section 21(2)(d) which relates to the fair determination of rights affecting the person who made the request. The appellant submits that he requires the information for his defence in the small claims court case brought against him by the affected person. For section 21(2)(d) to be apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

Without going into the particular details of the affected person's claims against the appellant, I accept that section 21(2)(d) is a factor which weighs in favour of disclosure of personal information and in particular the allegations made between the affected person and her past tenants. The appellant has provided me with details about a current, small claims court proceeding and he has provided me with the reasons why the information requested has some bearing on the affected person's claim and how the personal information is necessary to his preparation for the proceeding. I am mindful of the fact that even without the personal information in the records, the appellant will be getting some information about the affected person and the nature of the applications that were before the Tribunal from the disclosure of information, which I have found not to be personal information.

For the other personal information that is at issue, with the exception of the appellant's personal information, I have found that there are two factors (sections 21(2)(f) and (h)) against disclosure and one factor in favour of disclosure (section 21(2)(d)).

The balance of the information at issue is the information pertaining to other individuals (witness information), the tenants' personal information (in the records and on the photographs), and the allegations about the affected person contained in the explanation of reasons portion of the application form. Taking into consideration the nature of this information and the factors in section 21(2) which I find apply in this current case, I find that disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the tenants, the affected person, and the other individuals. As such, the personal information relating to the tenants, affected person and other individuals is exempt under section 21(1) of the *Act*.

## **ORDER:**

1. I uphold the Tribunal's decision to withhold the information pertaining to the other individuals, tenant information (name, address, sex, financial transactions, affected person allegations about the tenant), and the tenant allegations about the affected person

included in the explanation portion of the application forms in the records, and the tenant's descriptions on the photographs in Record 7 should also be withheld.

2. I order the Tribunal to disclose to the appellant all the other requested information contained in the records by **April 1, 2005** but no later than **April 6, 2005**, in accordance with the highlighted version of the records included with the Tribunal's copy of this order. To be clear, the Tribunal should not disclose the highlighted portions of the record.
3. In order to verify compliance with provision 2 of this order, I reserve the right to require the Tribunal to provide me with a copy of the records disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

February 28, 2005 \_\_\_\_\_