



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-2488**

**Appeal PA-060045-1**

**Ministry of Finance**



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## **NATURE OF THE APPEAL:**

The Ministry of Finance (the Ministry) received a request under the *Freedom of Information and Protection of Privacy* (the *Act*) for access to certain information relating to the insurance industry. This request gave rise to Appeal PA-050139-1, in which the Ministry contacted a named insurance company as an affected party. The named insurance company then made a request to the Ministry under the *Act* for access to a copy of the original request letter, including the identity of the requester, in Appeal PA-050139-1 (the original requester).

The Ministry identified one responsive record and denied access to it on the basis of section 21(1) of the *Act*, the personal privacy exemption. The named insurance company requester, now the appellant in this appeal, appealed that decision.

During mediation, the mediator contacted the original requester in Appeal PA-050139-1 to see if consent could be obtained to the release of a copy of the responsive record and the original requester's identity to the appellant. Consent was not obtained and this matter was streamed to adjudication.

I decided to send a Notice of Inquiry to the appellant initially, and I invited submissions from the appellant on the application of the mandatory personal privacy exemption in section 21(1) to the record at issue. I received representations from the appellant and determined that I did not need to hear from the Ministry.

## **RECORD:**

The one responsive record in this appeal is the original request letter, which identifies the requester in Appeal PA-050139-1. A significant portion of the responsive record is comprised of the wording of the request in Appeal PA-050139-1, which has already been excerpted from the request letter and made available to the appellant by the Ministry, and that portion of the letter is not at issue in this appeal. What remains at issue are the portions of the letter which have not been disclosed to the appellant.

## **DISCUSSION:**

### **Preliminary Comments**

The appellant provided submissions related to concerns it has about the Ministry's determination of, and response to, the access request in Appeal PA-050139-1. The appellant submits that these concerns affect not only its position as an affected party in Appeal PA-050139-1, which is still ongoing, but also have necessary implications for my determination of the present appeal, Appeal PA-060045-1.

I have reviewed the appellant's submissions carefully and I do not accept their position that the actions of the Ministry in Appeal PA-050139-1 impact this appeal. The Ministry's response and handling of the request in Appeal PA-050139-1 is not the subject of this appeal. This appeal flows from the Ministry's decision to deny the appellant's request for information about the original request and requester in Appeal PA-050139-1.

The sole issue properly before me in Appeal PA-060045-1 is, therefore, whether the Ministry's decision to withhold the original requester's identity and the portions of the request letter at issue under the mandatory exemption at section 21(1) was in accordance with the *Act*.

Accordingly, I will proceed with my analysis of the Ministry's reliance upon section 21(1) to deny access to the requested information without further comment on those portions of the appellant's submissions which do not directly address the personal privacy exemption.

### **Personal Information**

For the purpose of deciding whether or not the disclosure of the record would constitute an unjustified invasion of personal privacy, it is necessary to determine whether the record contains personal information and, if so, to whom it belongs.

The relevant parts of section 2(1) of the *Act* state:

“personal information” means recorded information about an identifiable individual, including,

...

(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...

In this appeal, the record in question contains the name, address and other contact details for an individual, information relating to the fact that the individual has submitted an access request, and information relating to the nature of that request. As identified above, a significant portion of the responsive record consists of the wording of the request in Appeal PA-050139-1, which has already been provided to the appellant by the Ministry.

Previous orders and Privacy Complaint Reports issued by this office have taken the position that someone's identity as a requester under the *Act* qualifies as that individual's personal information under section 2(1) of the *Act* (Order P-27, Privacy Complaints MC-040012-1, MC-05005-1, MC-050034-1).

The appellant provided representations on the personal information issue, acknowledging that without actually seeing the record, it is difficult to make submissions on whether it contains personal information or not. The appellant states:

The individual's name alone is not personal information caught by the *Act*. In any event, if the individual represents an organized interest of any nature, then the

name of that individual and the organization do not qualify as personal information. ... Based on the selective information provided, the [appellant] submits that the record at issue is not “about” an individual.

... [the] content of the record [as described in the request] does not appear to be “about” an individual but rather about certain requested records of [the appellant] and other insurance companies. The record itself does not engage the right to privacy of the individual requester in this case... [as] it does not reveal anything of a personal nature about the individual.

### *Finding*

Having considered the appellant’s submissions on this issue, I can see no justification for varying the approach taken in past orders and privacy reports of this office which stand for the principle that the identity of a requester satisfies the definition of personal information for the purposes of the *Act*. In my view, the original requester’s name and other related contact details contained in the responsive record qualify as that individual’s personal information under both paragraphs (d) and (h) of the definition of “personal information “ in section 2(1) of the *Act*. Under paragraph (h), disclosing the individual’s name reveals the fact that they made a request under the *Act*. The details of the request are then also associated with the individual, with the result that disclosing the name reveals “other personal information” about the original requester. I find, therefore, that the portions of the record at issue contain the personal information of the original requester.

### **Personal Privacy**

In situations where a requester is seeking the personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of that section applies. If the information fits within any of those paragraphs, it is not exempt from disclosure. In the circumstances of the present appeal, the only paragraph that could apply is 21(1)(f), which reads as follows:

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

...

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

In order for the section 21(1)(f) exception to the mandatory exemption in section 21(1) to apply, it must be established that disclosure would *not* be an unjustified invasion of personal privacy. The factors and presumptions in sections 21(2), (3) and (4) help in making this determination.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section

21(4) or the “public interest override” at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In the present appeal, none of the presumptions in section 21(3) are relied upon by the Ministry and none would apply.

If any of paragraphs (a) to (c) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21. In my view, section 21(4) is not applicable in the present appeal.

If no section 21(3) presumption applies, section 21(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 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99].

The appellant has submitted that the requested information is relevant to a fair determination of the appellant’s rights in the related appeal (PA-050139-1) in which it is an affected party. The appellant relies on paragraph (d) of section 21(2), which reads:

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;

For section 21(2)(d) to 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.)].

### *Representations*

The appellant suggests that the making of “appropriate submissions in the related appeal” creates an entitlement to this information and that procedural and substantive unfairness would result if it does not obtain this information. The appellant seems to imply that the motivation of the original requester can be gleaned through knowledge of that individual’s identity and is a critical aspect of assessing the case the appellant must meet in that appeal. The appellant states:

[t]here is no provision in the *Act* requiring that the [requester’s] identity be maintained in secret, and it is certainly not the intent of the Legislature to protect [requesters] seeking to use the *Act* inappropriately on behalf of industry associations or other organizations, without declaring their true motivation or intent, and the manner in which they plan to ultimately use such confidential information.

### *Findings*

As outlined above, the appellant must establish four points in order to support reliance upon the factor at section 21(2)(d) of the *Act*. Based on the representations and in the specific circumstances of this appeal, I am persuaded of the existence of the first two only.

First, I am satisfied that the “right in question is a legal right which is drawn from the concepts of common law or statute law”. The appellant in the present appeal was drawn into Appeal PA-050139-1 as an affected party upon receiving notice from the Ministry under section 28(1)(a) of the *Act* regarding an access request related to information contemplated by section 17(1). Notice given under section 28(1)(a) of the *Act* triggers certain consequent entitlements for an affected party in seeking to resist disclosure of the records at issue.

I am also satisfied that the continuing inquiry into Appeal PA-050139-1 constitutes an “existing proceeding” for the purposes of the second requirement of the test under section 21(2)(d).

The third requirement of section 21(2)(d) is that the personal information being sought has some bearing on, or is significant to the determination of the right in question, while the fourth requirement stipulates that the personal information is required to prepare for the proceeding or to ensure an impartial hearing. Notwithstanding the appellant’s submissions to the contrary, I am not persuaded that either of these elements are established in the circumstances of this appeal.

In reviewing the application of section 21(2)(d) in Order PO-1931, Adjudicator Irena Pascoe found that the factor had no application where the requested personal information would be of little or no assistance to the requester in pursuing her remedy since there must be a sufficient link between the proceedings and the *contents* of the records in issue to establish the application of the provision. I have adopted Adjudicator Pascoe’s finding for my analysis of the third requirement of section 21(2)(d) in the present appeal. In my view, the personal information in

the portions of the record remaining at issue could have no significance in the determination of the appellant's rights in Appeal PA-050139-1.

Finally, as regards the fourth requirement, I do not accept the appellant's submission that knowledge of the identity of the original requester and access to the portions of the request letter in Appeal PA-050139-1 remaining at issue are essential for the preparation of submissions in that appeal. In my view, the personal information requested is not necessary for either the preparation of submissions or to ensure the fairness of Appeal PA-050139-1. The appellant can make submissions about the disclosure of the records at issue in that appeal without knowing the requester's identity since what it seeks to protect is the *contents* of those records, which is completely unrelated to the requester's identity.

My conclusions about the third and fourth requirements of the test for the factor under section 21(2)(d) of the *Act* lead me to find that this factor is not applicable in the present appeal.

Furthermore, as previously noted, where the record contains the personal information of an individual other than the appellant, the only way that such a record can be disclosed is if I find that disclosure would not constitute an unjustified invasion of personal privacy of that individual. I have considered the appellant's representations together with the relevant circumstances of the appeal and I have not found any factors that would favour disclosure of the portions of the record at issue. Accordingly, in the absence of factors favouring disclosure, I find that disclosure of the portions of the record which remain at issue would constitute an unjustified invasion of personal privacy and section 21(1) applies.

#### **Additional Note**

I wish to add a few comments as an adjunct to my finding above. In my view, it is important to consider the context within which freedom of information legislation is enacted and its fundamental premise, which provides for public accessibility of government documents. Section 1 of the *Act* provides for a right of access to information under the control of institutions in accordance with certain principles, including that information should be available to the public, that exemptions from the right of access should be limited and specific, and that the decisions of institutions should be reviewable by a body independent of government.

Maintaining the confidentiality of requesters and their personal information is a key element in promoting the purposes of freedom of information legislation. In her *2000 Annual Report*, Commissioner Ann Cavoukian made the following comments:

A basic premise underlying the operation of all freedom of information schemes is that the identity of a requester should only be disclosed within an institution on a "need to know" basis. **Requiring individuals to demonstrate a need for information or explain why they are submitting a request would erect an unwarranted barrier to access** [emphasis added to original].

Furthermore, in Order PO-1998, Former Assistant Commissioner, Tom Mitchinson, addressed a situation in which the Ministry of the Environment had disclosed the identity of the requester to individuals within the Ministry who were unconnected to the request. He made the following statement which is, in my view, relevant to the issue raised by the appellant:

Access to information laws presuppose that the identity of requesters, other than individuals seeking access to their own personal information, is not relevant to a decision concerning access to responsive records. As has been stated in a number of previous orders, access to general records under the *Act* is tantamount to access to the public generally, irrespective of the identity of a requester or the use to which the records may be put. ... Except in unusual circumstances, there is no need for requesters to be identified because their identity is irrelevant.

The “unusual circumstances” referred to by the former Assistant Commissioner are not present in this appeal.

**ORDER:**

I uphold the Ministry’s decision.

Original Signed By: \_\_\_\_\_

Daphne Loukidelis  
Adjudicator

July 26, 2006 \_\_\_\_\_