



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2342

Appeal MA06-371

City of Toronto



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NATURE OF THE APPEAL:

A journalist submitted a request to the City of Toronto (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for the following information:

All bylaw charges issued by the mobile inspection unit of the city's municipal licensing and standards department from Jan. 1, 2000 to present. I request the data include the identity of the charging inspector, the "category description," date entered, defendant, charge and disposition.

The requester further stated that the information could be found in the City's "IBMS database," and asked that it be provided to him in electronic format.

By way of background, Chapter 545 of the City's *Municipal Code* sets out licensing rules for persons carrying out specific business activities within the City. The City's Municipal Licensing and Standards (MLS) Division issues licences and permits to both "stationary" and "non-stationary" businesses.

The MLS Division's Investigation Services is responsible for enforcing the requirements of Chapter 545, which includes ensuring that business license and permit holders are operating in accordance with the conditions of their licenses and permits. The Investigation Services unit includes a "mobile enforcement team" which deals with the enforcement of licenses and permits issued to "non-stationary" businesses, including the owners and instructors of driving schools and the owners and drivers of pedicabs, refreshment vehicles (e.g. hot dog carts), horse-drawn vehicles, tow trucks, taxicabs, limousines and school buses.

The City located the database identified by the requester. This database includes the following fields of information:

- name of defendant;
- "category description" (e.g., driving instructor, taxicab driver, limousine owner, tow truck owner, motorized refreshment vehicle owner, etc.);
- category (an alphanumeric code);
- name of the officer who laid the charge(s);
- specific charge (e.g., "T.T.O. [Tow Truck Owner] – Hire Unlic Driver", "Cab Dr [Taxicab Driver] – Not Good Repair", Dr Int [Driving Instructor] – Have More Than 1 Student in Car", etc.);
- date entered;
- disposition (dismissed, withdrawn, convicted, cleared by courts or set fine)

The City then issued a decision letter to the requester that granted him access to all of the fields of information, except for the names of defendants who are individuals. It denied him access to these names pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*. However, it disclosed the names of corporate defendants.

The requester (now the appellant) appealed the City's decision to this office, which appointed a mediator to assist the parties in resolving the remaining issues. This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process, in which an adjudicator may conduct an inquiry under the *Act* to review an institution's decision.

I commenced my inquiry by issuing a Notice of Inquiry to the City and inviting it to submit representations. In response, the City submitted representations to this office. I then sent the same Notice of Inquiry to the appellant, along with a copy of the City's representations, and invited him to submit representations. The appellant submitted representations in response. I then sent the appellant's representations to the City and invited it to reply to his representations. The City submitted representations by way of reply.

After reviewing the parties' representations, I decided to seek supplementary representations from them as to whether the names of the individuals charged by the City's mobile enforcement team under Chapter 545 of the *Municipal Code* constitutes their personal information or business information. The City submitted supplementary representations on this issue, but I did not receive any supplementary representations from the appellant.

RECORDS:

The only information at issue in this appeal is the names of the individual defendants charged by the City's mobile enforcement team under Chapter 545 of the *Municipal Code*.

DISCUSSION:

PERSONAL INFORMATION

As noted above, the City claims that the personal privacy exemption in section 14(1) of the *Act* applies to the names of the individual defendants. However, the section 14(1) exemption only applies to information that qualifies as "personal information," as that term is defined in section 2(1) of the *Act*. Consequently, the first issue that must be considered in this appeal is whether the individual defendants' names are their personal information.

Paragraph (h) of the definition in section 2(1) of the *Act* states that personal information means:

... recorded information about an identifiable individual, including,

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; [Emphasis added.]

However, 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 addition, the Ontario legislature recently amended the *Act* to exclude certain information from the definition of personal information. In particular, sections 2(2.1) and 2(2.2) state:

- (2.1) Personal information does not include the *name*, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. [Emphasis added.]
- (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

These amendments came into effect on April 1, 2007 and apply only to access requests made on or after that date. The City received the appellant’s access request on August 21, 2006. Consequently, I find that sections 2(2.1) and 2(2.2) do not apply in the circumstances of this appeal and I will not address these provisions any further in this order.

Summary of the parties’ representations

The City’s representations

In its representations, the City submits that the names of the individual defendants meet the definition of “personal information” in paragraph (h) of section 2(1) of the *Act*. As noted above, this paragraph states that an individual’s name qualifies as personal information “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 City asserts that the names of the charged individuals in the database appear with other personal information relating to them and that disclosure of their names would reveal other personal information about them:

... their names linked to the information already disclosed to the appellant i.e., details and disposition of the charges, would reveal further information about them.

In the supplementary Notice of Inquiry that I issued to the parties, I asked them to provide responses to the following two questions relating to whether the names of the individual defendants constitute their personal information or business information:

- Is the information about an individual in a personal capacity, or in a professional, official or business capacity?
- If the information is about an individual in a professional, official or business capacity, does the information reveal something of a personal nature about the individual?

In its supplementary representations, the City provided the following response to these two questions:

It is the City's view that the names together with only the category descriptions could be said to be information about individuals in their professional, official or business capacity. However, in the circumstances of this appeal, the names would also reveal the identities of persons who have been charged as individuals; the nature of those charges; and their outcomes. For example, the names of taxi drivers who have been charged and convicted with failure to be civil and well behaved. It is the City's view that such information is more than information identifying an individual in a business, professional or official capacity; it constitutes their sensitive personal information.

The City is of the further view that an analogy can be made with respect to the findings of the IPC prior to Bill 7 [sections 52(3) and (4) of the *Act*] with respect to information relating to employees. The IPC found that disciplinary information about employees arising from their employment, official or business including disciplinary action, nevertheless, constituted their personal information. See for example, Order P-1129.

The appellant's representations

As noted above, the appellant did not provide supplementary representations on the issue of whether the names of the individual defendants constitute their personal information or business information. However in the representations that he submitted in response to the initial Notice of Inquiry, the appellant states that the City has previously provided him with access to the names of driving school instructors (from the same database as the one at issue in this appeal) who had faced charges under Chapter 545 of the *Municipal Code*:

In 2006, I made a freedom of information request to the [City] for data from the City's municipal licensing database called IBMS ... That 2006 request was for the same information presently being requested. Following receipt and review of the data obtained pursuant to that request, I prepared several stories for publication ... relating to the licensing or continued licensing of driving instructors who have been charged and convicted of numerous bylaw offences and who have thousands of dollars of unpaid fines.

The appellant submits that his articles identified problems with the municipal licensing regime governing driving school instructors. He provided the following excerpt from one of his articles, dated September 18, 2006, in which both the provincial Minister of Transportation and the City's Manager of Licensing Services agreed that they needed to take corrective action to protect the public:

One of the problems ... is that while the city and province both play a monitoring role, they don't share information about instructors.

Even those with dozens of municipal by-law convictions and thousands in unpaid fines have little trouble renewing their provincial teaching licenses every three years. Provincial officials don't check municipal records – though they're easily available through a province-wide database – before letting instructors return to the road.

“The left hand does not know what the right hand is doing,” say Richard Mucha, manager of licensing services for the City of Toronto.

[Donna] Cansfield [Ontario's Minister of Transportation] agrees co-ordination is lacking.

“I think that's where it's our responsibility to get together and clear this up. And we will do that,” she says.

The appellant submits that disclosing the names of the individual defendants in the present appeal may have a similar effect. He further asserts that disclosure of the names will enable the public to scrutinize the City's licensing regime:

The public scrutiny that occurred following the 2006 FOI Request occurred in circumstances where I had access to the names of the instructors who had been subject to the numerous charges, convictions and unpaid fines. I submit that effective public scrutiny based on my present request requires that I similarly have access to the names of defendants. It is necessary to know the names of individuals who have been charged and convicted (and how often) in order for the public to engage in informed debate and discussion as to whether the municipal licensing regime is working. To the extent that a particular individual

has been charged and convicted multiple times but allowed to maintain a license, then members of the public will be able to raise specific concerns about whether the licensing regime is in fact working ...

Analysis and findings

I have carefully reviewed the information in the record at issue and considered the parties' representations. For the reasons that follow, I find that in the circumstances of this particular appeal, the names of the individual defendants constitute information about them in a business context, and are not their personal information. Consequently, these names must be disclosed to the appellant.

Order PO-2225 sets out this office's current approach to the personal information/business information distinction. In that order, former Assistant Commissioner Tom Mitchinson addressed the issue of whether the name of an individual who operates a business, but is not incorporated, is personal information or business information. The information at issue in that order was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

In his analysis, former Assistant Commissioner Mitchinson posed two questions that help to illuminate the distinction between information about an individual acting in a business capacity as opposed to a personal capacity:

... 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?

....

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?

With respect to the first question, former Assistant Commissioner Mitchinson concluded that the names of the non-corporate landlords appear in a business context:

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.

... 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.

I agree with this reasoning and adopt it for the purposes of the appeal before me. The information at issue is the names of the individual defendants charged by the City's mobile enforcement team under Chapter 545 of the *Municipal Code*. This mobile enforcement team deals with the enforcement of licenses and permits issued to "non-stationary" businesses. The individuals charged by the team own or operate businesses such as driving schools, pedicabs, refreshment vehicles (e.g. hot dog carts), horse-drawn vehicles, tow trucks, taxicabs, limousines and school buses. However, like the individual landlords in Order PO-2225, they are not incorporated.

In my view, an individual who obtains a business licence or permit from the City is clearly operating in a business context, even if that individual has not formally incorporated his or her business. For example, an individual who has obtained a business license or permit from the City to operate a hot dog cart has done so for the purpose of realizing income and making a profit by selling food to the public. Similarly, an individual who has obtained a licence from the City to operate a taxicab is endeavoring to generate income and make a profit by offering transportation services to the public.

In short, with respect to the first question posed in Order PO-2225, ("in what context do the names of the individuals appear?"), I find that the names of the individual defendants charged by the City's mobile enforcement team under Chapter 545 of the *Municipal Code* appear in a business context, not a personal context.

However, that is not the end of the analysis. 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?" In Order PO-2225, former Assistant Commissioner Mitchinson found that there was nothing about the names of the non-corporate landlords, if disclosed, that would reveal something of a personal nature about them. He stated:

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*.

In the appeal before me, disclosing the names of the individual defendants, in conjunction with the other information that the City has already disclosed to the appellant, would reveal the following:

1. these named individuals own or operate a business, such as a driving school, pedicab, refreshment vehicle, horse-drawn vehicle, tow truck, taxicab, limousine or school bus;
2. they were charged by the City’s mobile enforcement team under Chapter 545 of the *Municipal Code*;
3. the specific charge(s) that were laid against them (e.g., “T.T.D. [Tow Truck Driver] – Hire Unlic Driver, “Cab Dr [Taxicab Driver] – Not Good Repair”, Dr Int [Driving Instructor] – Have More Than 1 Student in Car”, etc.);
4. the name of the officer who laid the charge(s);
5. the specific date(s) on which the charges were entered; and
6. how the charges were disposed of (dismissed, withdrawn, convicted, cleared by courts or set fine)

For the reasons that follow, I find that disclosure of the names of the individual defendants, in conjunction with the information already disclosed by the City, would not reveal something of a personal nature about these individuals.

As noted above, the City submits that disclosing the names of the individual defendants, in conjunction with the charges they faced and the outcomes, would reveal something of a personal

nature about these individuals. It submits, for example, that the names of taxi drivers who have been charged and convicted with “failure to be civil and well behaved” is “more than information identifying an individual in a business, professional or official capacity; it constitutes their sensitive personal information.”

I am not persuaded by the City’s submissions on this point. The City’s mobile enforcement team deals with the enforcement of licenses and permits issued to “non-stationary” businesses. Consequently, the charges laid against individual defendants all relate to alleged misconduct in carrying out their business activities, not their personal activities. For example, a tow truck owner who is charged with hiring an unlicensed driver is alleged to have committed this offence in the course of running his or her business. Similarly, a taxi driver who is charged with “failure to be civil and well behaved” with a customer is alleged to have engaged in this misconduct while carrying out a business transaction, not in personal dealings with that customer. Moreover, and significantly, the charges laid fall squarely within the “business” context because they are directly related to the operation of the business.

In my view, there is nothing present here that would allow the information at issue to “cross over” into the “personal information” realm. I find, therefore, that the names of the individual defendants, in conjunction with the information already disclosed the City, would not reveal something of a personal nature about these individuals.

As noted above, the City further submits that “an analogy can be made with respect to the findings of the IPC prior to Bill 7 with respect to information relating to employees.” (The *Labour Relations and Employment Statute Law Amendment Act*, 1995, S.O. 1995, c. 1 (“Bill 7”) enacted the amendments found in sections 52(3) and (4) of the *Act*, and exclude certain labour relations and employment-related records from the scope of the *Act*.) In particular, the City asserts that this office has previously found that “disciplinary information about employees arising from their employment, official or business including disciplinary action, nevertheless, constituted their personal information. See for example, Order P-1129.”

I am not persuaded by the City’s submissions on this point. Order PO-2225 sets out this office’s current approach to the personal information/business information distinction. In my view, the approach in that order is more applicable in the circumstances of the appeal before me than some of the older orders of this office that addressed whether disciplinary information about employees constitutes their personal information.

In short, I conclude that the names of the individual defendants in this appeal are “about” these individuals in a business rather than a personal capacity. Consequently, this information does not qualify as “personal information,” as that term is defined in section 2(1) of the *Act*. The personal privacy exemption in section 14(1) only applies to “personal information.” Given that the names of the individual defendants do not qualify as “personal information,” this information cannot, therefore, be exempt under section 14(1). As the City has not claimed any other exemptions for this information, I will order that it be disclosed to the appellant.

In my view, this interpretation is consistent with the public accountability purpose of the *Act*, as identified in section 1(a) [see *Ontario (Ministry of Correctional Services) v. Goodis* [2008] O.J. No. 289 at para. 26], which is intended, in part, to provide the public with the means to scrutinize government-held records that document the actions or inactions of public officials. The charges laid against individual defendants who own or operate “non-stationary businesses,” such as taxi cabs, tow trucks and hot dog carts, touch on issues of public health and safety. Disclosure of these individuals’ names, in conjunction with the other information already disclosed, will enable citizens to scrutinize the effectiveness of the City’s licensing and enforcement regime and put pressure on their elected officials if it is determined that corrective action is needed. As well, given the business context in which this information arises, I conclude that this interpretation is not inconsistent with the privacy purpose underlying the *Act*, as identified in section 1(b).

ORDER:

I order the City to disclose the names of the individual defendants to the appellant by **October 6, 2008**.

Original signed by: _____
Colin Bhattacharjee
Adjudicator

_____ September 5, 2008