



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2834

Appeal PA08-280

Alcohol and Gaming Commission



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NATURE OF THE APPEAL:

The Alcohol and Gaming Commission of Ontario (the AGCO) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to a special occasion permit for a charity baseball tournament submitted under the *Liquor Licence Act*. The legal representative of an individual who was injured at the event sought access to the following information:

1. Any documents, letters or applications that were made for a liquor license for the event;
2. The liquor license permit that was issued for the event;
3. Any documents that were sent to the licensee including, without limitation, any documentation setting out the licensee's obligations that accompanied the issuing of the permit;
4. Any reports, correspondence or other written communications that were sent or received in relation to the application or issuance of the permit; and
5. Any discipline records that arise from the event or relate to [two named individuals] or [specified company];

The AGCO issued a decision advising that it was granting partial access to the records identified as responsive to the request, but that it was denying access to the remaining portions of the records pursuant to section 21(1) (personal privacy) of the *Act*. Following payment of the fee, the AGCO released severed copies of the records.

The requester (now the appellant) appealed the AGCO's decision to this office, which appointed a mediator to try to resolve the issues between the parties. During mediation, the AGCO advised that the special occasion permit no longer existed because it had been destroyed six months after it was issued, according to the Ministry's record retention schedule. The AGCO provided this office with a copy of the retention schedule for special occasion permits. The AGCO also clarified that because the permit information was stored on its AS/400 system, the responsive information was located on a four-page computer print-out from this system.

At that point, the appellant indicated that he would continue to seek access to the information related to the individual to whom the special occasion permit was issued but would not pursue access to the information related to the other parts of the request.

In addition, since the AGCO had not contacted the individual whose name appears in the records during the processing of the request, the mediator contacted this individual in order to determine if consent could be obtained for disclosure of the requested information to the appellant. Consent was not obtained. Upon further discussion, the appellant advised that he wished to pursue access

to the name of the affected individual only. Accordingly, only the name of the individual who applied for the special occasion permit remains at issue in this appeal.

As a mediated resolution of this appeal was not possible, it was transferred to the adjudication stage, where it was assigned to me to conduct an inquiry. I sent a Notice of Inquiry outlining the facts and issues to the AGCO initially, seeking representations, which I received.

Next, I sent a modified Notice of Inquiry to the appellant, with a complete copy of the AGCO's representations, in order to seek representations. The appellant's representative submitted representations for my consideration in this appeal. The appellant and his legal representative are referred to interchangeably in this order.

Finally, I decided that it was necessary to seek representations from the individual whose name appears on the special occasion permit. This individual did not submit representations.

DISCUSSION:

PERSONAL INFORMATION

The AGCO has withheld information in this appeal under section 21(1) of the *Act*, which exists as a mandatory exemption designed to protect individuals against unjustified invasions of their personal privacy. In deciding whether or not disclosure would constitute an unjustified invasion of personal privacy under section 21(1), it must first be determined if the records contain "personal information" and, if so, to whom it relates. Only personal information can be exempt under the personal privacy exemption at section 21(1).

The definition of personal information is found in section 2(1) of the *Act* and states that "personal information" means recorded information about an identifiable individual. Examples of personal information include information about an individual's religion or age [paragraph (a)], an identifying number [paragraph (c)] or 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" [paragraph (h)]. The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) 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.

(4) For greater certainty, subsection (3) 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.

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 and 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 and MO-2344].

Representations

In the present appeal, the AGCO states that “the name at issue is the name of a natural person who is an identifiable individual.” The AGCO submits that the record contains the individual’s name, address and telephone number and that while the address and telephone number are no longer at issue, the fact that the name appears together with the other personal information serves to bring the individual’s name within the scope of the definition of the term in section 2(1) of the *Act*. According to the AGCO, the fact that a particular individual has applied for a special occasion permit is that person’s personal information.

The appellant’s representations do not address the question of whether the record contains personal information according to the definition of the term in section 2(1) of the *Act*.

I sought representations from the individual whose name appeared on the special occasion permit with reference to whether the permit was taken out in their personal capacity or in an official capacity with the organization that hosted the charity baseball tournament. As noted previously, however, the affected individual did not submit representations for my consideration.

Analysis & Finding

On review, the record clearly contains the name of the individual who applied for the special occasion permit. To begin, however, I do not accept the AGCO’s position that the individual’s name along with the fact that the individual applied for the permit constitutes their personal information for the purposes of the *Act*. Rather, it appears from the information before me that the permit-holder acted as the contact person for a group or organization seeking to raise funds for a local health care centre.

In an attempt to clarify the nature of the permit-holder’s relationship with the organization of the event, I asked the individual to provide submissions in response to the following: “Is the information about you in a personal capacity, or in a professional, official or business capacity? Please explain with specific reference to your involvement in the organization which held the charity baseball tournament in question” [emphasis in original]. As no representations were

provided by the permit-holder, however, I will turn to the consideration of section 2(3) of the *Act*.

Added to the *Act* in 2006, section 2(3) modified the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". The intent of this amendment was to clarify the distinction between personal and business, professional or official capacity, and it essentially affirmed the approach this office had taken to the issue in many previous orders.

In Order P-300, for example, former Assistant Commissioner Tom Mitchinson considered whether correspondence submitted to an institution by a spokesperson for a local association constituted "personal information". He stated:

The meaning of the term "individual" in the context of the *Act* has been considered in previous orders and found not to include a sole proprietorship, partnership, unincorporated association or corporation (Orders 16, 113); a trade union, corporation or law firm (Order 42); or the names of officers of a corporation writing in their official capacity (Orders 80, 113).

In my view, correspondence submitted to an institution by a representative of a group or association such as the body represented by the appellant in this appeal, is not the personal information of the author of the correspondence. The correspondence was submitted to the institution by the local organization on the letterhead of the organization, and signed by the appellant in her capacity as a spokesperson of the organization. Consequently, I find that the record does not qualify as the appellant's "personal information" and it not necessary for me to consider the possible application of section 21 of the *Act*.

In my view, under section 2(3) of the *Act*, and by analogy to Order P-300, it appears that the individual who applied for the special occasion permit had agreed to act as the contact person for the group that organized the charity baseball tournament, at least as far as the AGCO was concerned. It follows, therefore, that the individual's name was not provided in a personal capacity, but rather in an official capacity as the representative for the group.

In the circumstances of this appeal, I find that the permit-holder's name in the records identifies that individual in an official capacity and that it therefore fits within section 2(3) of the *Act*. As information fitting within section 2(3) is not personal information, section 21(1) cannot apply to it. As no other exemptions have been claimed for this information and no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

ORDER:

1. I order the AGCO to disclose the requested information by sending it to the appellant by **November 18, 2009**, but not before **November 12, 2009**.

2. In order to verify compliance with provision 1 of this order I reserve the right to require the AGCO to provide me with a copy of the records as disclosed to the appellant.

Original Signed By: _____ October 14, 2009 _____
Daphne Loukidelis
Adjudicator