

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

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## **ORDER PO-3140**

Appeal PA12-149

Landlord and Tenant Board

November 27, 2012

**Summary:** The appellant made a request to the Landlord and Tenant Board for access to portions of video recordings taken by security cameras at the board's central office. Access to these recordings was denied on the basis that disclosure would constitute an unjustified invasion of the personal privacy of the named individuals recorded on the video. In this order, the adjudicator finds that the records contain the personal information of the named individuals, and upholds the application of the personal privacy exemption in section 21(1) to the records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1)(f), 21(2)(d).

**Cases Considered:** PC-MC07-68, PO-1764, PO-2018.

### **OVERVIEW:**

[1] The Landlord and Tenant Board (the board) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for all video recordings made by all of the security cameras at the board's central office in Mississauga on a specified date.

[2] In response to the request, the board issued a decision denying access to the responsive record pursuant to section 21(1) (personal privacy) of the *Act*. The board's

decision letter also stated that "... disclosure of these recordings is an unjustified invasion of the personal privacy of the individuals whose images are captured therein."

[3] The appellant appealed the board's decision.

[4] During mediation, the appellant confirmed that he is only interested in obtaining the images of three particular individuals who were at the board's office on the day in question. The images of the other individuals captured in the video are therefore not at issue in this appeal. The board confirmed its position that it was not prepared to disclose any part of the responsive records to the appellant, as they qualify for exemption under section 21(1).

[5] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. During my inquiry into this appeal, I sought and received representations from the appellant and the board. Representations were shared in accordance with *Practice Direction 7* and section 7 of the IPC's *Code of Procedure*.

[6] In this order, I uphold the decision of the board.

## **RECORDS:**

[7] The records consist of the video recordings taken by seven separate cameras from the board's central office in Mississauga on a specified date. The appellant has indicated that he only wants the images of three particular individuals.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1)?
- B. Does the mandatory exemption at section 21(1) apply to the records?

## **DISCUSSION:**

### **Issue A. Do the records contain "personal information" as defined in section 2(1)?**

[8] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if 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;

[9] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>1</sup>

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<sup>1</sup> Order 11.

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

(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.

[11] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup>

[12] 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.<sup>3</sup>

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

### ***Representations***

[14] The board states that the records contain the personal information of identifiable individuals as defined in section 2(1)(a) of the *Act*, as they contain recorded information relating to the race, national or ethnic origin or colour of the individual. It states:

The video recordings in question contain images of the individuals who attended [the board's] Central Region Office on [an identified date] between 8:00 am and 12:00 pm. ...

The images that are captured on the video footage would include a mix of individuals including Central Region staff and members, landlords, tenants legal representatives, witnesses for hearings, clients seeking information from Customer Service Officers at the front counter, delivery persons, and so on. Some of those individuals may have attended the Central Region

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

office in a business or professional capacity, and others in a personal capacity.

[15] The board then addresses whether the information in the records relates to the three named individuals in their business or professional capacity, and states:

Individuals such as landlords and legal representatives who attended [the board] office on [the morning in question] were doing so in a professional or business capacity (for example, to file [a board] application or attend [a board] hearing). However, even though these individuals were attending the office in business or professional capacity that morning, the footage containing their images may contain information that relates to them in a personal way rather than in a business capacity. For example, the footage may show the individual engaging in a personal conversation with another individual.

There is no audio track to the video recordings. Where the video shows individuals in conversation, it would not be clear whether the conversation related to business or personal matters, or a mix of both. The appellant has indicated that he expects the recordings will show his landlord in conversation with the landlord's former representative and his new representative. Even if it was possible to isolate footage of these three individuals in conversation, without an audio track, it would not be possible to know what they were talking about, let alone whether it was a business discussion related to the appellant's application being heard that morning.

[16] The board also refers to Privacy Complaint Reports MC10-2 and MCO7-68, and states that these reports find that information collected from video surveillance cameras qualifies as "personal information" under the *Act*.

[17] The appellant disputes that the video recordings of the three named individuals would constitute their personal information. Although he agrees that the video recordings of some people would constitute their personal information as defined in the *Act* because the purpose of their attendance at the offices is unknown, he states that if he is provided with a severed copy of the video recordings, which contain only the images of the three named individuals, different considerations apply.

[18] My understanding of the appellant's position is that because the three individuals attended at the board offices for business and professional purposes, the recorded images do not contain their personal information. However, in other parts of his representations, he seems to be making a different argument. At one point he suggests that the information is "personal information", but that he is "fully aware" of any personal information that relates to the appearance of the named individuals

because he has met them. Later in his representations he indicates the following reason why he wants access to the records:

I am simply trying to prove that [one named individual] was there in a business capacity and was involved with the matter between myself and [another named individual].

[19] This suggests that he is interested in obtaining access to the records to support his argument that the individual was at that location on that date in a business capacity.

[20] The appellant also provides additional representations which relate more directly to the application of section 21(1), and I address them below.

### ***Findings***

[21] I have considered the representations of the parties. I have also taken into account the Privacy Complaint Reports referred to by the board. In Privacy Complaint Report MC07-68 Commissioner Ann Cavoukian was asked to decide whether information collected by the Toronto Transit Commission's [the TTC's] video surveillance cameras is "personal information" as defined under section 2(1) of the *Act*. After reviewing the definition and certain guidelines,<sup>5</sup> she stated:

... the records at issue are the images of individuals that are captured by cameras situated within the TTC system. Clearly, such images are capable of identifying particular individuals and therefore, constitute "recorded information about an identifiable individual."

[22] As a result, Commissioner Cavoukian concluded that the information collected by the TTC's video surveillance cameras qualifies as "personal information" as defined under section 2(1) of the *Act*.

[23] I agree with the Commissioner's finding and apply it to the records at issue in this appeal. Accordingly, I am satisfied that the records at issue are images of individuals that are captured by security cameras situated in the board offices. These images are capable of identifying particular individuals and, therefore, constitute "recorded information about an identifiable individual" within the definition of "personal information" in section 2(1).

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<sup>5</sup> *Guidelines for the Use of Video Surveillance Cameras in Public Places* available online: [http://www.ipc.on.ca/images/Resources/up-3video\\_e\\_sep07.pdf](http://www.ipc.on.ca/images/Resources/up-3video_e_sep07.pdf). The relevant portion of this guideline reads: Personal information is defined in section 2 of the *Acts* as recorded information about an identifiable individual, which includes, but is not limited to, information relating to an individual's race, colour, national or ethnic origin, sex and age. If a video surveillance system displays these characteristics of an identifiable individual or the activities in which he or she is engaged, its contents will be considered "personal information" under the *Acts*.

[24] I have considered the appellant's position that the information is not personal information because the named individuals may have been present at the offices in their business capacity. However, I find that because the records still contain information about the individuals' race, colour, national or ethnic origin, sex and age, it constitutes their personal information for the purpose of paragraph (a) of the definition in section 2(1). In addition, recorded images of identifiable individuals may also constitute their personal information because it may reveal other personal information about the individual under paragraph (h) of the definition in section 2(1).

[25] The fact that the appellant may be aware of some of the personal information of the named individuals does not affect the nature of the information, and it remains the recorded personal information of these individuals.

**Issue B. Does the mandatory exemption at section 21(1) apply to the records?**

[26] I have found that the records contain the personal information of the affected parties.

[27] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. The only paragraph that might apply is paragraph 21(1)(f) which reads:

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

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

[28] Section 21(2) provides some criteria for determining whether the disclosure of the personal information constitutes an unjustified invasion of personal privacy. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[29] None of the parties have submitted that section 21(4) applies in the circumstances, and I find that it does not apply in this appeal.

[30] With respect to the factors in section 21(2), the appellant focuses on the factor in section 21(2)(d) and on an additional factor in support of his position that the information ought to be disclosed.

**Section 21(2)(d)**

[31] Section 21(2)(d) states:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

[32] Previous orders have stated that, 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.<sup>6</sup>

[33] The appellant provides confidential representations in support of his position that this factor applies. In these representations, the appellant refers to the various concerns he has with the board's processes and with the actions of various parties in the course of a hearing he was involved in. He then refers to the impact that this decision has had on him, and his interest in obtaining the record to enable him to pursue other legal avenues to address these concerns.

[34] In the board's representations, it anticipated that the appellant would rely on the factor in section 21(2)(d). In addressing this factor, the board stated:

The appellant is alleging that the video recordings are relevant to the determinations made in his [board] application against his landlord, [a specified numbered application]. This application was scheduled to be

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<sup>6</sup> 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.).



heard on [the morning in question]. However, at the hearing, the appellant's landlord requested an adjournment, which was granted. The application was heard on [a later date]. The application was initially resolved by an order issued on [a specified date] which dismissed the application. The appellant requested a review of the order, which was denied in an order issued on [another date]. I have enclosed copies of these orders.

In his correspondence, the appellant alleged that his landlord's former representative attended the Central office and met with the landlord and the landlord's new representative. The appellant indicated that he believes the former representative was assisting the appellant's landlord and the current representative from "behind the scenes". The appellant indicated that he believed this assistance delayed the proceedings.

A party to [a board] proceeding has a right to request a summons for the production of any record arguably relevant to the proceeding. In addition to forwarding the appellant's request for the video recordings to the Freedom of Information Coordinator, the Central Region Office also treated the appellant's request for the video recordings as a request for a summons. The Vice Chair for the Central Region Office who decided the summons request considered the relevance of the video recordings with respect to the determination of the appellants rights in [the numbered application]. In the enclosed decision the Vice Chair determined that the appellant did not establish the likely relevance or necessity of the video recordings to the proceedings. The Vice Chair's decision indicates that the member who granted the adjournment did so because the appellant had amended his application at the hearing and the landlord needed additional time to prepare.

[35] The board then states that the decision of the Vice Chair on the appellant's request for a summons makes clear that disclosure of the video recordings had no bearing on the fair determination of the appellant's rights under the appellant's application. Therefore, the board argues that section 21(2)(d) does not apply to the records at issue.

[36] The board's representations were shared with the appellant. Although he does not directly address the board's representations that section 21(2)(d) does not apply based on the information set out above, the appellant maintains that he requires the information for a fair determination of his rights.

*Findings*

[37] On my review of the information provided by the parties, I am not satisfied that the factor in section 21(2)(d) applies in the circumstances of this appeal.

[38] To begin, I find that the appellant has not provided sufficient evidence to establish that the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of an identified right. Although the appellant refers to certain avenues and relief he is pursuing, I am not satisfied that he has established that the record has a bearing on his exercise of those rights or remedies.

[39] Furthermore, I am not satisfied that the appellant has established that the personal information is required "in order to prepare for the proceeding or to ensure an impartial hearing." In making this finding, I have reviewed the decision of the Vice Chair in which the appellant's request for a copy of the records is reviewed in that context. I note that the Vice Chair found that the appellant had not established the likely relevance of the information to the legal matter at issue, and also that the appellant failed to establish how the record (without an audio component) could provide evidence in support of the appellant's position.

[40] Accordingly, I find that the factor in section 21(2)(d) does not apply.

***Additional factor***

[41] The appellant also raises an additional factor in support of his position that the information ought to be disclosed to him. He states that the board makes audio recordings of all hearings, and that these audio recordings include a "block" of hearings, which would include hearings of other parties. He argues that this means the board releases the personal information of the individuals at the hearing, and states that:

... this request is no different in that it is the same personal information being released ...

[42] The appellant also refers to the board's rules regarding the recording of proceedings and the rights individuals have to access these recordings.

[43] In its initial decision letter, the board addressed this issue. It acknowledged that recordings of hearings were made in certain circumstances, and then stated:

Rule 25 of the Board's Rules of Practice provide for the disclosure of the audio recording in these circumstances. There is no Rule of Practice providing for the disclosure of security camera recordings.

### *Findings*

[44] I do not accept the appellant's argument that the release of the audio recordings of hearings means that the video recordings at issue in this appeal ought to be disclosed. The disclosure of audio recordings of the hearings is done under the board's Rules of Procedure. There is a significant difference between the disclosure of audio recordings of board hearings, and the disclosure of video recordings from security cameras. I find that the fact that audio recordings are disclosed does not support the position that the records at issue in this appeal ought to be disclosed.

### ***Conclusion***

[45] Having found that the records at issue contain the personal information of named individuals, and in the absence of any factors favouring disclosure of this personal information, I find that the disclosure of the records at issue in this appeal would constitute an unjustified invasion of privacy, and that the records qualify for exemption under section 21(1) of the *Act*.

### **Additional matters**

[46] In his representations the appellant asks that the video recordings be disclosed to him, and also argues that, if there is a concern about the personal information of identifiable individuals, I could issue a "production order" which could meet the identified privacy concerns. The appellant states that such a production order could restrict or limit the use to which the personal information is used – for example – it could be restricted for use in certain litigation.

[47] In Order PO-2018, Senior Adjudicator Sherry Liang addressed a similar request, and she stated:

A final issue to be addressed is the affected party's request that I place restrictions on the use of the information, should I order it to be disclosed. It has been said in prior orders that disclosure of general records under the *Act* is considered to be "disclosure to the world" (see Orders MO-1243 and P-1499, for example). There is no authority for conditional disclosure under the *Act*, save for the provisions in section 21(1)(e), relating to disclosure for research purposes, which do not apply here.

[48] I agree with the decision in Order PO-2018, and decline to issue an order as requested by the appellant.

[49] Lastly, both parties addressed at some length the issues regarding possible severance of the video recordings. Given my findings that the disclosure of the records would constitute an unjustified invasion of the personal privacy of the named

individuals, there is no need to address the issue of the possible severance of the records.

**ORDER:**

I uphold the decision of the board and dismiss this appeal.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ November 27, 2012