

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3252

Appeal PA13-81

Ministry of Government Services

September 11, 2013

Summary: The Ministry of Government Services (the ministry) received a request for information relating to any involvement of a named individual in any Ontario corporation, partnership or sole proprietorship. The requester relied upon the reasoning in Order PO-3142 which found that this type of information did not constitute "personal information" for the purposes of the notification requirements in section 28(1). The ministry nevertheless notified the named individual pursuant to section 28(1), arguing that it was required to do so because the decision in Order PO-3142 was the subject of a reconsideration request and the finding that the information did not qualify as "personal information" was not, at that time, settled. In this order, the decision to notify the named individual under section 28(1) is upheld as reasonable.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 28(1).

Orders and Investigation Reports Considered: PO-3142

OVERVIEW:

[1] The Ministry of Government Services (the ministry) received a request from the appellant under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information pertaining to a named individual's involvement "as an administrator (i.e. officer or director) of any Ontario corporation or as a sole proprietor or partner of any unincorporated entity." As part of the request, the appellant advised

that he is relying on Order PO-3142 in which I found that similar information to that which was the subject of this request did not qualify as "personal information" as that term is defined in section 2(1) of the *Act*. As a result, the appellant indicated that it would be "inappropriate for the [ministry] to advise anyone of the request."

[2] In response to the request, the ministry informed the appellant that, pursuant to section 28 of the *Act*, it would be notifying the individual who was identified in the request. The ministry stated that it was doing so because, at that time, Order PO-3142 was the subject of a reconsideration request made on behalf of one of the affected parties to that appeal.

[3] The appellant objected to the ministry undertaking notification of the subject of the request under section 28, arguing that because I found in Order PO-3142 that the information at issue was not "personal information" for the purposes of the *Act*, it was not required to notify this individual under section 28. The appellant appealed the ministry's decision to notify the affected party to this office.

[4] In the interim, the reconsideration request brought by the affected party in Order PO-3142 has been dismissed. This same individual has, however, brought an application for the judicial review of my decision in PO-3142 in the Ontario Superior Court of Justice (Divisional Court).

[5] I sought and received the representations of the ministry. A complete copy of those representations was attached to a Notice of Inquiry provided to the appellant, who also submitted representations.

[6] In this order, I find that the ministry's decision to notify the affected party of the request was reasonable and I dismiss the appeal.

ISSUES:

[7] The sole issue for determination in this appeal is whether the ministry was in error in notifying the affected party of the request pursuant to section 28(1) of the *Act*.

DISCUSSION:

Notification of an affected party under section 28(1) of the *Act*

[8] When an institution receives a request under the *Act* and determines that it will grant access to the responsive information, section 28(1) requires the institution to provide written notice to certain parties of the request and its decision to disclose under certain circumstances. Section 28(1) states:

Before a head grants a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

[9] In the present appeal, the ministry received a request from the appellant for information from its ONBIS database relating to the affected party. The ministry chose to notify the affected party under section 28(1) of its decision to disclose the requested information on the basis that the responsive information is "personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f)." This decision to notify the affected party was made despite my finding in a related appeal that gave rise to Order PO-3142 that the requested information did not constitute "personal information" as that term is defined in section 2(1) of the *Act*.

[10] The ministry argues that at the time it made its decision to notify the affected party pursuant to section 28(1)(b), my decision in Order PO-3142 was the subject of a reconsideration request brought by the affected party and the decision was not, accordingly, a final decision. Ultimately, I dismissed the affected party's reconsideration request and upheld the decision in Order PO-3142, but at the time the ministry issued its decision letter in the current appeal, the question remained unresolved, according to the ministry. It must also be noted that Order PO-3142 is the subject of an application for judicial review to the Divisional Court by the affected party. As a result of that pending application, I have stayed the operation of the order provisions in Order PO-3142 until such time as the Divisional Court has determined the issues before it. A hearing of the application has yet to be scheduled.

[11] The appellant argues that the ministry should not have notified the affected party of the request because the criteria set out in section 28(1) were not met. The appellant states that the information contained in the record which was to be disclosed by the ministry did not qualify as third party information under section 17(1). In addition, because the information in the record was not "personal information" as that term is defined in section 2(1), it could not be exempt under section 21(1). The

appellant relies upon my findings in Order PO-3142 that the information in the record did not qualify as “personal information” as the basis for this position.

[12] The appellant also states that because the information sought in his request was contained in the ONBIS database, it was not appropriate for the ministry to notify the affected party. He submits that when requests are made for information in that or any other public database, the subjects of the request are never notified by the ministry and that to do so in this case was inappropriate.

[13] An important distinction must be made between a request made under the *Act* for access to information that happens to be contained in the ONBIS database and a search of the ONBIS database for public information filed with the ministry pursuant to the *Business Names Act*, the *Business Corporations Act* and the *Corporations Information Act*, which are referred to by the appellant as the Governing Statutes. Notification of the subjects of a request for information from the ONBIS database under one of the Governing Statutes is clearly not required. To impose such a requirement would be impracticable and would have the effect of making the database far less accessible to the public.

[14] However, when, as was the case in the current appeal, the request is made pursuant to the *Act*, certain notification obligations are mandatory when the criteria set out in section 28(1) are satisfied. In this case, during the window of time between the issuance of Order PO-3142 and my dismissal of the reconsideration request initiated by the affected party, my determination that the record did not contain the personal information of the affected party may have been overturned. However, once I had dismissed the reconsideration request from the affected party, the ministry could rely on my finding that the record did not contain the personal information of the affected party and the mandatory notification obligation in section 28(1) no longer applied. Accordingly, after the reconsideration request was dismissed, the ministry was able to rely on the finding in Order PO-3142 that the record did not contain the affected party’s personal information as the basis for a decision not to notify this individual.

[15] In conclusion, I find that given the circumstances surrounding the timing of the request, it was reasonable for the ministry to have provided the section 28(1) notification to the affected party. At that time the decision was made, the ministry was unclear as to whether the information qualified as “personal information” within the meaning of that term in section 2(1). Accordingly, I find that the ministry’s notification the affected party was reasonable and I uphold its decision to do so.

ORDER:

I uphold the ministry's decision to notify the affected party under section 28(1) of the *Act* and dismiss the appeal.

Original Signed by: _____
Donald Hale
Adjudicator

_____ September 11, 2013