

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3258

Appeal PA12-157

Ministry of Health and Long-Term Care

September 26, 2013

Summary: The Ministry of Health and Long Term Care received a request for access to information relating to the shareholders of a licensed company. After notifying three affected parties pursuant to section 28 of the *Act*, the ministry denied access to the record, pursuant to the mandatory personal privacy exemption at section 21(1), taking into consideration the presumption addressing financial information at section 21(3)(f) of the *Act*. In this order, the adjudicator finds that the record contains the personal information of the affected parties, the shareholders. Although she finds that the presumption at section 21(3)(f) does not apply, she also finds that no factors favouring disclosure are relevant in the circumstances. As a result, the adjudicator upholds the ministry's decision to deny access to the information pursuant to section 21(1) of the *Act* and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1)(f), 21(2)(d) and (e), 21(3)(d).

Orders and Investigation Reports Considered: Orders M-347, PO-1893, PO-1986, PO-2011, PO-2225, PO-2260, and MO-2566.

OVERVIEW:

[1] The Ministry of Health and Long Term Care (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

Any and all documentation regarding the shareholdings of the owners of the IHF license No. [identified number], namely the licensee: [named company], operating at [identified address] including, information as to who the shareholders are on record for the Licensee and the quantum of their respective shareholdings.

[2] Pursuant to section 28 of the *Act*, the ministry notified three individuals, who might have an interest in the disclosure of the requested information (the affected parties), and sought their views on disclosure. All three of the affected parties objected to the disclosure of the information that relates to them.

[3] The ministry issued a decision, denying access to the requested information based on the mandatory exemption at section 21(1) (personal privacy) of the *Act*, having taken into consideration the presumption at section 21(3)(f) (financial information).

[4] The requester, now the appellant, appealed the ministry's decision to deny access.

[5] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*.

[6] I began my inquiry into this appeal by sending a notice of inquiry to the ministry and the three affected parties, seeking their representations. The ministry provided representations in response. Two of the affected parties responded to the notice of inquiry and stated simply that they object to the disclosure of any information that the ministry has about them and in particular, any information regarding the shareholding structure of the corporation identified in the request and any shareholders' personal information.

[7] In accordance with the usual practices of this office, I shared the ministry's representations, in their entirety, with the appellant. The appellant also provided representations which I then shared with the ministry and the affected parties by way of reply. The affected parties provided reply representations reiterating that they object to the disclosure of any information related to them. The ministry did not provide representations in reply.

[8] In this order, I find that the record at issue contains "personal information" as that term is defined in section 2(1) of the *Act* and that disclosure of this personal information would amount to an unjustified invasion of the personal privacy of the individuals to whom it relates, the shareholders, pursuant to the mandatory exemption at section 21(1) of the *Act*. Accordingly, I uphold the ministry's decision not to disclose the information and dismiss the appeal.

RECORDS:

[9] The record at issue consists of two pages, pages 11 and 13, taken from a document entitled "Application for Renewal of License under the Independent Health Facilities Act."

ISSUES:

- A. Do the records at issue contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Do the records at issue contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[10] In order to determine whether the mandatory exemption at section 21(1) of the *Act* might 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;

[11] 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.¹

[12] 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.

[13] 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.²

[14] 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.³

¹ Order 11.

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

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

Representations

[16] The ministry submits that the information on pages 11 and 13 of the record constitutes personal information. It submits:

Pages 11 and 13 contain the residential addresses of the named, affected parties. An individual's home address, as opposed to his/her business address is personal information. It falls squarely within paragraph (d) of the definition of the personal information in the *Act*: "The address ... of the individual."

Pages 11 and 13 also contain information about the number of shares held by each named affected party. The ministry submits that this is information about the named individuals' assets, as it relates to their ownership interest in the corporation, and that their names constitute personal information in this context because they appear "with other personal information relating to the individual," as per s. 2(1)(h).

[17] In his representations, the appellant submits that he is prepared to narrow the scope of the request for information that was originally made. He submits that now he only seeks access to the names of the shareholders of the licensee, the company named in the request. The appellant submits:

To the extent that the pages 11 and 13 of the record include other "personal information" as defined in sections 2(1)(d) and 2(1)(h) of [the *Act*] (be it residential address information or the number of shares held by the named affected parties), the appellant requests that the record be redacted accordingly to remove this information before production or that the [ministry] simply provide the names of the shareholders of the licensee in response to the inquiry. This way, there will be no concern that the information sought appears "with other personal information relating to the individual," as per section 2(1)(h) of the *Act*.

[18] The appellant submits that were the record severed in this manner to reveal only the shareholder names, it no longer contains "personal information" as defined by the *Act* and would, therefore, not be subject to the mandatory exemption at section 21(1) of the *Act*.

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

Analysis and findings

[19] Based on my review of the record, and taking into account the appellant's narrowing of the scope of the request to include only the names of the shareholders, I find that it contains the personal information of the three affected parties. Although in their representations, the appellant has narrowed his request and now seeks access to only the names of the shareholders listed in the record, in my view, this information alone qualifies as their "personal information" as defined in section 2(1) of the *Act*.

[20] Previous orders have examined the distinction between personal information and business/professional information, and Order PO-2225 sets out this office's current approach to the distinction. In that order, former Assistant Commissioner Tom Mitchinson addressed the issue of whether the name of an individual who operates a business is that individual's personal information or business information. The information under consideration in that order was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

[21] In his analysis, the former Assistant Commissioner posed two questions to 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 it inherently personal in nature?

[22] In Order MO-2566, Adjudicator Stephanie Haly relied on the reasoning set out in Order PO-2225, to determine whether information about two shareholders that appeared in records relating to the acquisition of their respective companies qualified as business or personal information. Despite finding that, in response to the first question ("in what context does the name of the individual appear?"), their names appeared in a business context, Adjudicator Haly found that the disclosure of that information would reveal information that was personal to them; specifically, it would reveal financial transactions in which the affected parties had been involved as private individuals, namely, the sale of their companies.

[23] I agree with the reasoning in both of these orders and adopt it for the purposes of this appeal.

[24] In the current appeal, the names of the affected parties appear on two pages taken from an "Application for Renewal of License under the Independent Health Facilities Act." Although I have received no representations from the parties on this issue, in my view, it appears that the affected parties' names appear on this document in a business, rather than a personal, capacity. The affected parties appear to be identified on a document that relates to the renewal of a license required to run a particular company, the independent health care facility identified in the request, of which they are shareholders. Accordingly, with respect to the first question posed in Order PO-2225, ("in what context does the name of the individual appear?", I find the names of the affected persons appear in a professional or business, not a personal context.

[25] However, this is not the end of the analysis. I must go on to ask the second question posed in Order PO-2225: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?"

[26] Based on my review of the information relating to the affected parties at issue in the record, and, applying the reasoning of Order MO-2566, I am satisfied that it constitutes their "personal information." Even if the residential addresses and the number of shares held by the affected parties are severed from the record, I find that the disclosure of their names alone would reveal the fact that they hold shares in the identified company. In my view, the fact that a particular individual holds shares in a company constitutes information relating to financial transactions in which the individual has been involved, as contemplated by paragraph (b) of the section 2(1) definition of "personal information." As such, in accordance with paragraph (h) of that definition, the affected parties' names, where they appear with other personal information relating to the individual (the information regarding their financial transactions), qualify as personal information. Accordingly, I find that the affected parties' names consist of their "personal information" within the scope of the definition outlined in section 2(1) of the *Act*.

[27] I will now consider whether the personal information of the affected parties that is at issue, their names, is subject to the mandatory personal privacy exemption at section 21(1).

B. Does the mandatory exemption at section 21(1) apply to the information at issue?

[28] Where a requester seeks the 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. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

[29] The section 21(1)(a) to (e) exceptions are relatively straightforward. If sections 21(1)(a) to (e) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21(1). In this appeal, these sections do not apply.

[30] The section 21(1)(f) exception is more complex, and requires a consideration of additional parts of section 21. Section 21(1)(f) 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.

[31] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

Section 21(3) - presumptions

[32] 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.⁵ In the circumstances of this appeal, it does not appear that either section 21(4) or section 23 apply.

[33] The ministry submits that the presumption at section 21(3)(f) applies. That section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[34] None of the other presumptions listed at section 21(3) appear to be relevant in the circumstances of this appeal.

[35] The ministry submits that the information at issue falls within the presumption in section 21(3)(f), as it describes an individual's assets. The ministry submits that the

⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

Canadian Oxford Dictionary describes "assets" as "property and possessions" or "any possessions having value."

[36] The ministry states that the record sets out the total number of shares owned by each of the named individuals and submit that this type of information amounts to a description of an individual's assets, as it is in his or her possession or representations their property. The ministry submits that section 21(3)(f) does not require the information constitute all of the individual's assets, and that any type of amount of such assets fall within the exemption. It also states that the assets at issue in the record are voting shares in a company.

[37] The ministry submits:

Furthermore, the value or profitability of the shares is irrelevant. In Order PO-1893, the IPC held that a record revealing the fact that individuals hold mining leases is subject to the presumption because the lease is an interest in real property and therefore an asset – regardless of the fact that they may not result in mining activity which gives rise to a profit.

[38] Therefore, the ministry takes the position that the disclosure of the information is presumed to constitute an unjustified invasion of the affected parties' personal information pursuant to section 21(3)(f), and that the presumption is not rebutted by section 21(4) as none of the exceptions listed in that section apply.

[39] As noted above, the appellant states that he is prepared to narrow the scope of its request and seek access only to the names of the shareholders listed in the records. He submits that as a result, the names alone do not qualify as "personal information" as defined by section 2(1) of the *Act*.

[40] However, he submits that if I am of the view that despite this narrowing of the scope that the information is still "personal information" the information "can nevertheless be disclosed pursuant to section 21(1)(f) as an exception to the mandatory exemption in that "the disclosure does not constitute an unjustified invasion of personal privacy."

[41] The appellant disagrees with the ministry's position that the information sought by the appellant falls within the presumption at section 21(3)(f) of the *Act* as "it describes an individual's ... assets...." He does so based on the reasoning expressed in Order PO-2011 which found that in order to fall within the ambit of this presumption the information sought must be specific and reveal its dollar value or size. The appellant submits that given that the information sought pursuant to the narrowed scope is simply the names of the shareholders, it does not fall within the presumption listed at section 21(3)(f) of the *Act* and therefore, its disclosure does not give rise to a presumed unjustified invasion of privacy.

[42] Previous orders issued by this office have established that to meet the “describes” requirement of that section, the information does not need to be sufficiently detailed that it describes an individual’s finances or income as whole.⁶ While the ministry raises Order PO-1893, in which the names and addresses of owners of mining leases were said to fall within the presumption at section 21(3)(f), more recent orders have established that although the information need not be absolutely precise, it must be reasonably accurate and specific and, for example, reveal its dollar value or size.⁷ In these more recent orders, merely disclosing that certain estates are valued at more than a specific dollar amount has not been found to be sufficiently detailed to fall within the section 21(3)(f) presumption.⁸

[43] In the circumstances of this appeal, the disclosure of the affected parties’ names would reveal that those individuals hold shares in the named company. However, it would not reveal any further information such as the number of shares owned, a description of their class, or their dollar value, estimated or otherwise. In my view, this information is not sufficiently detailed to be said to “describe” their finances or assets for the purposes of section 21(3)(f). Accordingly, I find that this presumption does not apply to the information at issue.

[44] The ministry has not claimed that any of the other presumptions apply and, in my view, none of them are relevant to this appeal. If no section 21(3) presumption applies, section 21(2) of the *Act* lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁹

Section 21(2) - factors

[45] 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).¹⁰

[46] In the circumstances of this appeal, the appellant submits that the factor favouring disclosure at section 21(2)(d) is relevant. The affected parties’ representations appear to suggest that the factor at section 21(2)(e) weighing against disclosure is relevant. Those sections read:

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,

⁶ Order PO-1986.

⁷ Orders PO-2011 and PO-2260.

⁸ Orders PO-2011, PO-2012-R and PO-2260.

⁹ Order P-239.

¹⁰ Order P-99.

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

...

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

Section 21(2)(d)

[47] The appellant states section 21(2)(d) of the *Act* is a relevant factor weighing in favour of disclosure as the names of the shareholders are "relevant to a fair determination of rights affecting the person who made the request." The appellant submits that the information is required for and relevant to "the determination of tort claims relating to allegations of conspiracy and intentional interference with economic relations in a civil proceeding currently before the Ontario Superior Court of Justice." The appellant submits that "the information sought will assist the court in determining the participants in the conspiracy, the acts taken in furtherance of the conspiracy by each of the co-conspirators and relates to the determination of the tort of intentional interference with economic relations."

[48] 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 hearing¹¹

[49] Previous orders have established that whether section 21(2)(d) applies where a requester seeks the information for the purpose of commencing or maintaining a civil action against the individual depends on the circumstances, including whether there are

¹¹ 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.).

alternative methods of obtaining the information.¹² However, where the requester has retained specialized litigation counsel for the purpose of civil litigation, it may be that the discovery mechanisms available to the requester in that litigation will be sufficient to ensure a fair hearing with the result that section 21(2)(d) does not apply.¹³

[50] Additionally, for the factor at section 21(2)(d) to be relevant, it is not sufficient that the personal information in issue have some bearing on the determination of a right. The requester must establish that the personal information is required to prepare for the proceeding or ensure an impartial hearing.¹⁴

[51] In the circumstances of this appeal, the appellant has established that there is an ongoing civil proceeding that relates to, amongst other things, allegations of interference with economic relations. Accordingly, I accept that parts 1 and 2 of the section 21(2)(d) test have been met. With respect to parts 3 and 4 however, I do not accept that I have been provided with sufficient evidence to suggest that the names of the shareholders themselves have some bearing on or are significant to the determination of the rights in question that are currently before the court. More particularly, I have not been provided with any evidence to suggest that the disclosure of the shareholder names is required in order for the appellant to prepare for the proceeding or to ensure that he receives an impartial hearing. Accordingly, I find that the factor at section 21(2)(d), weighing in favour of disclosure of the personal information, is not relevant in the circumstances of this appeal.

Section 21(2)(e)

[52] In their representations, the affected parties object to the disclosure of any of their personal information and submit that the disclosure of such information would have a negative impact both personally and professionally and cause them financial hardship. In my view, this suggests the possible application of the factor at section 21(2)(e).

[53] Section 21(2)(e) is a factor favouring privacy protection that contemplates that the individual to whom the information relates will be exposed unfairly to pecuniary or other harm. In order for this section to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.¹⁵

[54] Previous orders have held that when evidence is not provided to show how and in what manner the individuals to whom the information relates will be exposed unfairly

¹² Order M-1146.

¹³ Order PO-2833.

¹⁴ Order M-119.

¹⁵ Order P-256

to pecuniary or other harm, section 21(2)(e) has been held not to be a relevant consideration.¹⁶

[55] In the circumstances of this appeal, the affected parties' representations are brief and, in my view, not sufficiently detailed to establish how and in what manner he will be exposed unfairly to pecuniary or other harm were their names and status as shareholders to be revealed. Accordingly, I find that the factor favouring privacy protection at section 21(2)(e) is not a relevant consideration in determining whether the disclosure of the affected parties names amounts to an unjustified invasion of personal privacy.

[56] Although I have not found that any of the factors *weighing against* the disclosure of the information at issue apply, without evidence establishing that any of the factors *favouring* disclosure apply, I find that the disclosure of the names of the affected parties would constitute an unjustified invasion of their personal privacy under the mandatory exemption at section 21(1). Accordingly, I find that the information at issue is exempt from disclosure and I will uphold the ministry's decision not to disclose it.

ORDER:

I uphold the ministry's decision not to disclose the information at issue in the record and dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ September 26, 2013

¹⁶ Order M-347.