

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-3269

Appeal PA13-254

West Park Healthcare Centre

October 28, 2013

**Summary:** The healthcare centre received a request under the *Act* for access to expense reports and supporting documents relating to an individual who worked for the centre (the third party). The healthcare centre decided to withhold small portions of the records relating to certain financial information, but to disclose the remaining information. The third party appealed the centre's decision, suggesting that the exemption in section 21(1) (personal privacy) may apply and arguing that the information ought not to be disclosed for a number of other reasons. This order finds that the information remaining at issue is not "the personal information" of the third party or any other individual within the definition of that term in section 2(1) of the *Act*, and therefore does not qualify for exemption under section 21(1). It also determines that there are no other reasons to withhold the information, and orders that it be disclosed to the requester.

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

**Orders Considered:** PO-2225, PO-2536, PO-1998, PO-2688.

### OVERVIEW:

[1] The West Park Healthcare Centre (the healthcare centre) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for various

records relating to a named individual employed by it, including certain expense reports.

[2] After providing notice to a party whose interests may be affected by the request (the third party), the healthcare centre issued an access decision in which it denied access to certain records because they were not covered by the scope of the *Act*, or because they did not exist. With respect to the request for expense reports, however, the healthcare centre identified the responsive expense reports and related documents (61 pages) and stated that it was granting partial access to these records. It also indicated that access to some small portions of the records was denied on the basis of the exemptions in section 18(1) (economic information) and 21(1) (personal information) of the *Act*. The redactions relate to signatures and certain financial information, such as bank account numbers.

[3] The healthcare centre also advised the third party of its decision to disclose to the requester the responsive expense reports and related documents (with minor redactions).

[4] The third party appealed the healthcare centre's decision to provide access to those records.

[5] The requester did not appeal the healthcare centre's decision to deny access to the minor redactions made to the records, and those redactions are not at issue in this appeal.

[6] 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*. I sent a Notice of Inquiry identifying the facts and issues in this appeal to the third party appellant, initially, and received representations in response. In the circumstances, I decided that it was not necessary to seek representations from the other parties to this appeal.

[7] In this order, I find that information remaining at issue does not contain "personal information" for the purposes of the *Act*, and I order that it be disclosed to the requester.

## **RECORDS:**

[8] The records remaining at issue are the unredacted portions of the responsive expense reports and related documents (61 pages). These include Account Statements, reimbursement information, and other supporting documentation including details of expenses.

## **ISSUES:**

A: Do the records contain "personal information" as defined in section 2(1)?

B: Does the personal privacy exemption in section 21(1) apply?

## **DISCUSSION:**

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

[9] 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;

[10] 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>

[11] Section (2.1) also relates to the definition of personal information. It states:

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.

[12] 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>

[13] 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>

### ***Representations***

[14] The third party appellant does not directly address the issue of whether the records contain "personal information." However, the third party suggests that the request, which was also for other records including certain personal information such as an employment contract, was specific to the third party, and that no other healthcare centre employees' information was requested. In that regard, the third party identifies a concern that the request for the information is made with the intent to target and "harm" the third party as an individual, and not to obtain information about an officer or employee of the centre. The third party notes that this information would not be available to the requester if not for the fact that the third party works for an institution covered by the *Act*. The third party also suggests that, in the circumstances, the request might be an abuse of the spirit and intent of the legislation, and also refers to section 24(1.1) of the *Act*, which refers to requests that are "frivolous and vexatious."

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<sup>1</sup> Order 11.

<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.

*Analysis and findings*

[15] A number of orders have reviewed the issue of access to expense account information, and whether these records contain “personal information.” In Order PO-2225, former Assistant Commissioner Tom Mitchinson set out the following two-step process applicable to a determination of whether information is “about” an individual in a business rather than a personal capacity, and therefore does not constitute personal information:

...the first question to ask in a case such as this is: “in what context [does the information] 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?

[16] Assistant Commissioner Brian Beamish applied this approach in Order PO-2536, in which he had to determine access issues regarding portions of certain expense claim forms and supporting documents submitted to the Ontario Energy Board (the OEB) by four named senior executives. He noted that a significant portion of the over 500 pages of records had been disclosed, and determined that, of the information remaining at issue, only certain discreet portions constituted “personal information” for the purpose of the *Act*. Specifically, he found that home addresses, telephone numbers, specific menu selections and information relating to any personal expenditures for which the executives reimbursed the OEB constituted “personal information.” The Assistant Commissioner determined that the remaining information did not constitute “personal information” as defined in section 2(1) of the *Act*.

[17] I adopt the approach to this issue set out in these earlier decisions.

[18] On my review of the information contained in the portions of the records at issue in this appeal, I find that it appears and relates to the third party in a business, professional or official government context, and not in a personal context. These records relate to expenses paid by the healthcare centre for expenses incurred by its employee, the third party. They include account statements, reimbursement information, and details of expenses incurred by the third party in the course of conducting professional duties on behalf of the healthcare centre.

[19] Furthermore, I find that there is nothing about the particular information at issue that, if disclosed, would reveal something of a personal nature about the third party or any other identifiable individual. The records remaining at issue do not contain personal addresses or telephone numbers. There are no detailed "menu selections" or similar information whose disclosure would reveal something that is inherently personal in nature about the third party or any other identifiable individual.

[20] I also note that some of the expensed items include brief hand-written notations providing additional details about the expense. Some of these notations include the names of other individuals. Although not raised by the third party, I considered whether these names might constitute the personal information of these other individuals. I note that Assistant Commissioner Beamish addressed this type of information in PO-2536 and stated:

The pages also include the names of other individuals who attended lunch or dinner meetings with the executives and menu selections of individuals attending the lunch or dinner meetings. ...

Having reviewed the records, I note that a number of the individuals that were entertained by the four senior executives were other staff members of the OEB. Others were government officials employed outside the OEB and the balance related to other individuals. ...

Applying the test set out by former Assistant Commissioner Mitchinson, I find that the names and contact information of the individuals entertained by the senior executives ... are not personal information as defined by the *Act*. As is the case with all government employees, employees of the OEB are only entitled to claim reimbursement from the OEB for expenses that they have incurred if they relate to business conducted on behalf of the OEB. It is routine practice for all government employees to claim for these expenditures by providing supporting documentation and details related to the expense. The system is designed to make the employees accountable for the expenditure of public funds. In these circumstances, I find that the details of those expenditures and the names of individuals that were entertained appear in an exclusively business, professional or official government context.

The second part of the test articulated by the former Assistant Commissioner is whether there is something about the information at issue that if disclosed would reveal information of a personal nature about the individual. If the executives were conducting business meetings over meals with other individuals, then the disclosure of the names of the individuals that participated in those meetings does not reveal information of a personal nature about those individuals. The only information that is

revealed is that these individuals had a business or professional relationship with the executives. ... Accordingly, I find that the second part of the test has been satisfied and that the names and contact information of the individuals that were entertained by the executives are not the personal information of those individuals.

[21] The Assistant Commissioner also stated:

Given that public funds covered the cost of these meetings, it is to be presumed that the meetings involved public business. Disclosing the names of individuals who met with affected parties is therefore not disclosing any information of a personal nature.

[22] Applying this same approach to the names of individuals in the records at issue, I am satisfied that this information does not constitute their personal information. As public funds covered the cost of these business meetings over meals with named individuals, I conclude that the disclosure of the names of these other individuals who participated in these meetings does not reveal information of a personal nature about those individuals.

[23] In summary, I find that none of the withheld information constitutes the personal information of the third party appellant or any other individual as defined in section 2(1) of the *Act*.

[24] Because the personal privacy exemption in section 21(1) of the *Act* can only apply to information that is the personal information of an identifiable individual, this section cannot apply to the information at issue in this appeal.

[25] I will briefly address two additional matters raised by the third party in this appeal.

[26] As noted above, the third party suggests that, in the circumstances, the request might be an abuse of the spirit and intent of the legislation, and also refers to sections of the *Act* that relate to "frivolous or vexatious requests. Section 10(1)(b) of the *Act* reads:

Subject to subsection 69(2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

(b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[27] The frivolous and vexatious provisions in the *Act*, which are also addressed in section 24(1.1) of the *Act* and section 5(1) of Regulation 460, make it clear that the decision about whether to raise these provisions lies with the institution. Previous orders have determined that, to the extent that a third party may have the ability to raise these provisions (if at all), it would only be done in “rare” or “unusual” circumstances.<sup>4</sup> These orders have also confirmed that the frivolous and vexatious provisions of the *Act* are not intended to be used by parties resisting disclosure of records that would be otherwise subject to the *Act* because these parties do not like the request or are suspicious of the requester.<sup>5</sup> In the circumstances of this appeal, I have not been provided with sufficient evidence to satisfy me that the frivolous and vexatious provisions of the *Act* ought to be considered further in this appeal.

[28] Lastly, the third party identifies the concern that this type of information would not be available to the requester if not for the fact that the third party works for an institution covered by the *Act*. The third party refers to the purposes of the *Act* set out in section 1, which include the public’s right to access government information, and suggests that access to information targeted at a specific individual does not meet this purpose, and is an abuse of the *Act*.

[29] I accept the third party appellant’s position that information about expense accounts may not be available to a requester if the third party did not work for an institution covered by the *Act*; however, this is not a reason to deny a requester access to the information. The healthcare centre is clearly covered by the *Act*, and its records are accessible by the public unless an exemption or exception applies to them. The identity of a requester or the reasons why records are requested are generally not relevant to issues concerning access to records. As set out in Order PO-1998:

Access to information laws presuppose that the identity of requesters, other than individuals seeking access to their own personal information, is not relevant to a decision concerning access to responsive records. As has been stated in a number of previous orders, access to general records under the *Act* is tantamount to access to the public generally, irrespective of the identity of a requester or the use to which the records may be put.

[30] In the circumstances of this appeal, I am not satisfied that there is any reason to treat this request differently, and I reject the third party’s suggestion that the request is an abuse of the *Act*.

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<sup>4</sup> See, for examples, orders PO-2490, PO-2050 and PO-2688.

<sup>5</sup> Order PO-2688.



**ORDER:**

I uphold the decision of the healthcare centre, and order it to disclose the information remaining at issue to the requester by **December 3, 2013** but not before **November 27, 2013**.

Original signed by: \_\_\_\_\_

Frank DeVries  
Adjudicator

\_\_\_\_\_ October 28, 2013