

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-3350

Appeal PA13-324

Ministry of Consumer Services

June 9, 2014

**Summary:** The ministry received a request under the *Act* for access to registration and licencing information for a named Assistant Bailiff for the year 2012. The ministry identified records responsive to the request and notified an affected party pursuant to section 28(1) of the *Act*. The affected party did not submit representations. The ministry issued a decision to the requester, granting him partial access to the responsive records. The affected party appealed the decision, claiming that the exemption in section 21(1) (personal privacy) applied to the information at issue. This order upholds the ministry's decision, finding that the information does not contain the personal information of the appellant, as that term is defined in section 2(1) of the *Act*.

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

**Orders and Investigation Reports Considered:** Order PO-2225

### OVERVIEW:

[1] The Ministry of Consumer Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to registration and licencing information for a named Assistant Bailiff for the year 2012.

[2] The ministry identified two responsive records. Pursuant to section 28(1) of the *Act*, the ministry notified an individual whose interests may be affected by the disclosure of the records (the affected party), seeking his submissions. The affected party did not respond to the ministry's notice.

[3] In the absence of a reply from the affected party, the ministry issued a decision, advising the requester and the affected party that partial access was granted to the responsive records. The ministry advised the parties that portions of the records were withheld as they were not responsive to the original request and a portion of the records was exempt under the mandatory personal privacy exemption in section 21 of the *Act*.

[4] The affected party, now the appellant, appealed the ministry's decision.

[5] During mediation, the appellant advised the mediator that he believes the records contain his personal information and that he objects to the disclosure of any of the records. The original requester advised the mediator that he continues to seek access to the responsive records. However, the original requester confirmed that he does not seek access to the information that the ministry withheld from disclosure. Accordingly, the only information at issue in this appeal consists of those portions of the records the ministry proposes to disclose.

[6] Mediation did not resolve the issues in this appeal and it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking representations from the appellant and the ministry, who both submitted representations. Upon review of their representations, I found it unnecessary to seek representations from the original requester.

[7] In the discussion that follows, I find that the information at issue does not constitute "personal information" within the meaning of that term in section 2(1) of the *Act* and I uphold the ministry's decision.

## **RECORDS:**

[8] There are two pages of records at issue in this appeal consisting of registration information printed from the ministry's database.

## **DISCUSSION:**

### **Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[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] 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.

[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>

[14] 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>

[15] In its representations, the ministry submits that the IPC has previously held that, generally, information relating to an individual in a professional, business or official capacity will not be considered personal information. The ministry refers to Order PO-2225, in which 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 considered in Order PO-2225 was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

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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.

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

[16] 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?

[17] Referring to the first question, the ministry submits that the information in the two records is about the appellant in a professional capacity. In other words, the ministry submits that the information relates to the affected party's status as a registered assistant bailiff. With regard to the second question, the ministry submits that the registration information that it proposes to disclose relates to the appellant in a professional capacity and does not contain information that would reveal something of a personal nature of the appellant.

[18] In his representations, the appellant submits that the records should not be released.

[19] Based on my review of the records and the parties' representations, I find that the information at issue does not contain the affected party's "personal information" within the meaning of section 2(1) of the *Act*. The information at issue, consisting of the appellant's name, licence/registration/appointment type, registration number and other registration information relating to him, relates to the appellant in a professional capacity only as it relates to his role as an Assistant Bailiff. I note that the appellant's name, licence/registration/appointment type, employer and file number are publicly available through the ministry's website. With regard to the licence status administrative information at issue, I agree with the ministry and find that it relates to the appellant in a professional capacity. With regard to the registration date information, in the absence of any evidence demonstrating otherwise, I agree with the ministry and also find that this information relates to the appellant only in a professional capacity. Therefore, upon review of the information at issue, I find that it does not constitute "personal information" within the meaning of that term in section 2(1) of the *Act*.

[20] As the mandatory exemption in section 21(1) can only apply to personal information, I find that the disclosure of the records would not constitute an unjustified

invasion of the appellant's personal privacy. I have reviewed the records and find that no other mandatory exemption may apply to the records and the ministry has not claimed the application of any of the discretionary exemptions in the *Act*. Therefore, I find that the information at issue does not qualify for exemption under the *Act* and should be disclosed to the requester.

**ORDER:**

1. I uphold the ministry's decision and dismiss the appeal.
2. I order the ministry to disclose the records to the requester by **July 14, 2014**, but not before **July 9, 2014**.

Original signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ June 9, 2014