

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3385

Appeal PA13-548

Landlord and Tenant Board

August 26, 2014

Summary: This appeal arises from a request for the contact information of the requester's neighbour's tenant. The board located 7 records containing the responsive information and denied access to them, in full, pursuant to the mandatory exemption relating to personal privacy at section 21(1). The requester appealed the board's decision. This order upholds the board's decision to deny access to the tenant's contact information, finding that the mandatory exemption at section 21(1) applies to it. The appeal is dismissed.

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), (f), (g), and (i), and 21(3)(b) and (f).

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 the contact information (telephone and address) of the requester's neighbour's tenant. In his request the requester explained that he requires this information to assist in a Small Claims Court matter.

[2] The board located 7 records containing the requested information and issued a decision denying access to them, in their entirety, pursuant to the mandatory exemption for personal information at section 21(1) of the *Act*.

[3] The requester, now the appellant, appealed the board's decision to deny access to the requested information.

[4] During mediation, the appellant explained that his neighbour is suing him in Small Claims Court with respect to flooding that occurred in the neighbour's basement. He stated that he requires the neighbour's tenant's contact information as he would like to speak with her regarding the Small Claims Court matter. He explains that as the tenant no longer resides at his neighbour's property, he seeks the tenant's current address which his neighbour has indicated, in Court, that she does not have.

[5] The board advised that it cannot confirm whether the tenant's contact information, as it appears in its records, is current or valid.

[6] During mediation, the mediator attempted to contact the tenant, at the contact information listed in the records, for the purpose of determining whether she would consent to the disclosure of her information. The tenant could not be reached.

[7] As a mediated resolution could not be reached and the appellant continues to seek access to the tenant's contact information, the file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. In my inquiry into this appeal, I sought and received representations from both the board and the appellant. The board's representations were shared with the appellant in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction Number 7*. I deemed that it was not necessary to share the appellant's representations with the board. I also sent a copy of the Notice of Inquiry to the tenant, inviting her to make her views known. The tenant did not provide representations in response to the Notice of Inquiry.

[8] In this order, I find that the records contain the personal information of the tenant and that its disclosure would result in an unjustified invasion of the tenant's personal privacy, as contemplated by the mandatory exemption at section 21(1) of the *Act*. Accordingly, I uphold the board's decision not to disclose the records to the appellant and I dismiss the appeal.

RECORDS:

[9] The board located 7 records that contain the tenant's contact information and denied access to them in full:

- record dated October 1, 2013;

- record dated July 1, 2013;
- record dated May 2, 2013;
- record dated April 30, 2013;
- record dated April 27, 2013;
- record dated April 19, 2013; and,
- record dated February 23, 2013.

ISSUES:

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

DISCUSSION:

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

[10] 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;

[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] The board submits that the responsive records contain two addresses and several telephone numbers which purportedly belong to the tenant and that this type of information falls under paragraph (d) of the definition of "personal information" in section 2(1) of the *Act*.

[13] The board explains that the reason why it has the tenant's personal information is that her landlord filed an application to terminate her tenancy. It submits that information about tenants who are parties to applications to the board and its predecessor, the Ontario Rental Housing Tribunal, have been found to meet the definition of personal information under the *Act* in previous orders issued by this office.

[14] The board further submits that the information sought by the appellant relates to the tenant in a strictly personal capacity. It submits that it is her personal contact information; that the rental unit was not a commercial rental unit; that the tenant's occupation of the rental unit was not for a business or professional purpose, and; there exists no business or professional relationship between the appellant and the tenant.

[15] The board states that it believes that the appellant is already aware of the tenant's first name and the first initial of her last name. It submits that the disclosure of the information contained in the records would clearly render her identifiable.

¹ Order 11.

[16] The appellant does not specifically address the issue of whether the records contain the tenant's "personal information" within the meaning of that term, but clarifies that while his initial request was for her contact information, he later requested that the board acknowledge only if the contact information was on file.

[17] I have reviewed the responsive records and accept that all of the information that they contain qualifies as the "personal information" of the tenant as that term is defined in section 2(1) of the *Act*.

[18] The records at issue contain the tenant's contact information, including her addresses and telephone numbers (paragraph (d)). They also contain information relating to financial transactions in which she has been involved (paragraph (b)) and her name, together with other personal information relating to her (paragraph (h)).

[19] Accordingly, I find that the records contain the "personal information" of the tenant within the meaning of the definition set out in section 2(1) of the *Act*.

B. Does the mandatory exemption at section 21(1) of the *Act* apply to the personal information contained in the letter?

[20] 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.

[21] In the circumstances, it appears that the only exception that could apply is section 21(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy. That section 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.

[22] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. In the circumstances, it does not appear that section 21(4) is relevant.

Section 21(3)

[23] 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.² In the circumstances of this appeal, neither section 21(4) nor section 23 is relevant.

[24] The board claims that the presumptions at section 21(3)(b), (c) and (f) apply in the circumstances of this appeal. Those sections read:

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

...

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

...

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[25] The board provides confidential representations to explain how the presumptions at sections 21(3)(b) and (c) apply to some of the records and submits that one of the records qualifies under the presumption at section 21(3)(f) as it provides a history of the tenant's rent payments, therefore describing her finances.

[26] Upon review of the records, I accept that disclosure of the records for which the board has claimed section 21(3)(b) are presumed to amount to an unjustified invasion of the tenant's personal privacy.

² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[27] Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.³ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁴ The presumption can apply to a variety of investigations, including those relating to by-law enforcement⁵ and violations of the Ontario Human Rights Code.⁶

[28] In my view, the record dated July 1, 2013, was compiled and is identifiable as part of an investigation into a possible violation of law and, therefore, its disclosure is presumed to be an unjustified invasion of the tenant's personal privacy under section 21(3)(b).

[29] I also accept the board's representations with respect to the application of section 21(3)(f) to the records dated February 23, 2013 and October 1, 2013. In my view, both of these records contain information that describes the tenant's finances, including her financial history or activities. Accordingly, I find that the presumption at section 21(3)(f) applies to these records.

[30] However, I do not accept the board's confidential representations with respect to the application of the presumption at section 21(3)(c). In my view, none of the records contain information related to eligibility for social service or welfare benefits or to the determination of benefit levels. Accordingly, I find that the presumption at section 21(3)(c) does not apply.

[31] I have found that the presumptions at section 21(3)(b) and (f) apply to three of the records at issue, specifically, those dated February 23, 2013, July 1, 2013, and October 1, 2013. As a result, the disclosure of the information contained in those records is presumed to give rise to an unjustified invasion of the tenant's personal privacy and exempt from disclosure under the mandatory exemption at section 21(1).

[32] However, for the remaining records, I must go on to weigh the factors outlined in section 21(2) to determine whether their disclosure would constitute an unjustified invasion of personal privacy.

Section 21(2)

[33] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁷ In order to find that disclosure does not constitute an unjustified invasion of

³ Orders P-242 and MO-2235.

⁴ Orders MO-2213, PO-1849 and PO-2608.

⁵ Order MO-2147.

⁶ Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

⁷ Order P-239.

personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.⁸

[34] 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).⁹

[35] In the circumstances it appears that the factors weighing against disclosure at sections 21(2)(f) (highly sensitive) and 21(2)(g) (unlikely to be accurate or reliable) and 21(2)(i) (unfairly damage the reputation of any person referred to in the record), might apply, while the factor weighing in favour of disclosure at section 21(2)(d) (fair determination of rights) might also apply. 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,

...

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

...

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

...

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Factor weighing in favour of disclosure: section 21(2)(d)

[36] For section 21(2)(d) to apply, previous orders have stated that the appellant must establish that:

⁸ Orders PO-2267 and PO-2733.

⁹ Order P-99.

- (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.¹⁰

[37] In his representations, the appellant refers to a Small Claims Court matter and submits that the disclosure of the tenant's contact information will significantly assist in a fair determination of his rights in that action. He submits that the Court ordered the landlord to disclose the tenant's contact information to him. He goes on to state that the landlord subsequently lied under oath in that proceeding and denied that she had access to this information.

[38] The board submits that in order to satisfy the requirements of section 21(2)(d) of the *Act*, the appellant must demonstrate that access to the records is significant to a fair determination of his rights in a Small Claims Court matter and that the information is required to prepare for the proceeding or to ensure that he receives an impartial hearing. It submits that if contacting the affected party was truly significant to the fair determination of the appellant's rights in the Small Claims Court matter, the appellant could be granted a summons by that court to assist him in obtaining this information. The board submits that this factor weighs in favour of denying access to the records.

[39] The Small Claims Court matter relates to a dispute between the appellant and the landlord. I note that the board is not a party to that action. Disclosure under the *Act* is a process that is separate and distinct from that which occurs in the context of a legal dispute and raises different concerns and considerations. Consequently, it has previously been held that for the purposes 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.¹¹

[40] In the circumstances of the current appeal, I accept that appellant's position that the tenant's contact information may be relevant to his ability to present evidence to

¹⁰ 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.).

¹¹ Order PO-1833.

support his defence in the Small Claims Court matter. The landlord, who is the plaintiff in that matter, has been ordered to provide the appellant with the tenant's contact information, if it is available to her. From the evidence before me, the landlord has indicated to the Court that she is unaware of the tenant's current contact information. The board has on file, records containing contact information for the tenant, some of which may or may not be current. In the circumstances, I accept that the appellant has established that the tenant's contact information has some bearing on or is significant to the determination of the right in question before the Court in the small claims matter. Accordingly, I find that he has established that the information is required in order to prepare for that proceeding or to ensure an impartial hearing. I accept that section 21(2)(d) is a relevant factor that should be given some weight in the circumstances of this appeal.

Factors weighing against disclosure: sections 21(2)(f), (g) and (i)

21(2)(f): highly sensitive

[41] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹² The board submits that this is a relevant factor weighing against the disclosure of the remaining records.

[42] Having reviewed the information contained in the remaining records, I find that given its personal nature its disclosure could reasonably be expected to cause significant personal distress to the tenant. In some of the records the tenant's contact information appears in a context where, even if the records were severed to disclose only that contact information, disclosure would reveal personal information that is of a highly sensitive nature. In my view, the disclosure of this type of information to an individual who is not party to, nor has any interest in the landlord's application to terminate the tenant's tenancy before the board, would cause the tenant significant personal distress.

[43] Accordingly, I find that the factor weighing against disclosure at section 21(2)(f) is relevant in the circumstances of this appeal.

21(2)(g): unlikely to be accurate or reliable

[44] The board submits that the information that the appellant seeks, specifically, the contact information of the tenant is unlikely to be accurate or reliable as it has been unable to contact the tenant either by telephone or by mail using the information contained in the records.

¹² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[45] Given that both the board and this office were unable to contact the tenant at the addresses and telephone numbers identified in the records, I accept that this information is unlikely to be accurate or reliable and, therefore, the factor at section 21(2)(g) is a relevant factor weighing against disclosure of the information.

21(2)(i): unfairly damage the reputation of the person referred to in the record

[46] The applicability of this section is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved.¹³

[47] The board submits that the records at issue are documents from the board's file regarding the landlord's application to terminate the tenant's tenancy. It submits that the records contain information that has the potential to be used to unfairly damage the tenant's reputation.

[48] Having reviewed the records, I accept the board's argument in this respect in relation to the personal information of the tenant that appears in the records. Although I acknowledge that the disclosure of the tenant's contact information alone might not unfairly damage her reputation, given the format and nature of records in which it appears, in my view even if the records were severed to provide only for the disclosure of the contact information, this would reveal incomplete information that could reasonably be expected to damage or harm her reputation. In the circumstances, I accept that this damage would be unfair. Accordingly, I find that the factor weighing against disclosure at section 21(2)(i) is relevant in the circumstances of this appeal.

Conclusion

[49] In conclusion, I find that the presumptions at section 21(3)(b) and (f) apply to three of the records at issue and that, as a result the disclosure of the information contained in them is presumed to amount to an unjustified invasion of the tenant's personal privacy and exempt from disclosure under the mandatory exemption at section 21(1).

[50] With respect to the remaining information, although I find that the factor in section 21(2)(d) weighs in favour of disclosure as the tenant's contact information is relevant to a fair determination of the appellant's rights in the matter before the Small Claims Court, I find that this factor is outweighed by the three relevant factors weighing against its disclosure. As discussed above, I find that the information is highly sensitive (section 21(2)(f)), it is unlikely to be accurate or reliable (section 21(2)(g)) and that its disclosure may unfairly damage the reputation of the tenant (section 21(2)(i)). Therefore, I find that disclosure of the remaining information would also give rise to an

¹³ Order P-256.

unjustified invasion of the tenant's personal privacy as contemplated by section 21(1) of the *Act* and that the personal information relating to the tenant in the records, in this case her contact information, is exempt from disclosure under that section.

ORDER:

I uphold the board's decision that the records are exempt from disclosure and dismiss the appeal.

Original signed by: _____
Catherine Corban
Adjudicator

_____ August 26, 2014 _____