

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3573

Appeal PA15-196

Ministry of Transportation

January 28, 2016

Summary: The appellant is a real estate company which is seeking the name of the individual who filed an access request with the ministry for the appellant's winning proposal in an RFP competition. The ministry provided the appellant with partial access to the "Access/Correction Request" form that was filed by that individual but denied access to his name under the mandatory personal privacy exemption in section 21(1) of the *Act*. In this order, the adjudicator finds that the individual's name identifies him in a business rather than a personal capacity and, in accordance with section 2(3), it is excluded from the definition of "personal information" in section 2(1). Given that section 21(1) only applies to personal information, this information cannot be withheld under that exemption. The adjudicator orders the ministry to disclose the individual's name to the appellant.

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

Orders and Investigation Reports Considered: Order PO-2764.

OVERVIEW:

[1] The appellant, which is a real estate company, submitted an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Transportation (the ministry) for the following record:

[C]opy of form prepared by individual/corporation that has submitted a request under the [*Act*] for copies of [name of appellant]'s winning proponent proposals for RFPs RS-30-09 and RS-10-01. (Your File 15-022)

[2] The ministry located the responsive record, which is the "Access/Correction Request" form that an individual submitted to the ministry. It provided the appellant with partial access to this record but withheld the individual's name, signature, address and telephone number under the mandatory exemption in section 21(1) (personal privacy) of the *Act*.

[3] The appellant appealed the ministry's access decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to assist the parties in resolving the issues in dispute. The ministry informed the mediator that the individual who filed the access request for the appellant's winning proposal was one of the other bidders in the RFP competition. The mediator contacted this individual, who is an affected party in this appeal, but was unable to obtain his written consent to disclose his name to the appellant. This appeal was not resolved during mediation and was moved to adjudication for an inquiry.

[4] I issued a notice of inquiry, setting out the facts and issues in this appeal, to the ministry, the affected party and the appellant. I received representations from the appellant but not from the ministry or the affected party. In its representations, the appellant indicates that it is only seeking the name of the individual who filed the access request for the appellant's winning proposal in the RFP competition. Consequently, I have removed the affected party's signature, address and telephone number from the scope of the appeal, and I will simply determine whether his name should be disclosed to the appellant.

[5] In this order, I find that because the affected party's name identifies him in a business capacity, it is not his "personal information" and cannot, therefore, qualify for exemption under section 21(1) of the *Act*. The ministry is ordered to disclose the affected party's name to the appellant.

RECORD:

[6] The record in this appeal is an "Access/Correction Request" form that the affected party filed with the ministry. The only information remaining at issue is the affected party's name.

ISSUES:

- A. Does the record 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. Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[7] Under section 53 of the *Act*, where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution. In addition, the IPC has found that an affected party who resists disclosure of a record or part of a record also bears the burden of proving that an exemption applies.¹

[8] In the circumstances of this appeal, both the ministry and the affected party are resisting disclosure of part of the record (the affected party’s name) but did not submit any representations in response to the notice of inquiry that I sent to them. Consequently, neither of these parties has met the burden of proving that the personal privacy exemption in section 21(1) applies to the withheld information.

[9] However, section 21(1) is a mandatory exemption, which means that even in the absence of evidence from the parties resisting disclosure, I must still consider whether this exemption applies to the affected party’s name. In making this determination, I will consider the appellant’s representations, the substance of the record itself, the mediator’s report, and other documents in the appeal file before me.

[10] The mandatory personal privacy exemption in section 21(1) of the *Act* only applies to “personal information.” Consequently, it must be determined whether the record contains “personal information” and, if so, to whom it relates. In particular, it must be determined whether the affected party’s name, which has been withheld by the ministry, constitutes that individual’s “personal information.” That term is defined in section 2(1), which states, in part:

“personal information” means recorded information about an identifiable individual, including,

(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] However, sections 2(3) and (4) exclude certain information from 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.

¹ Order 3.

(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] The ministry has withheld the affected party's name from the record at issue. If this name identifies the affected party in a business, professional or official capacity, it is excluded from the definition of "personal information" in section 2(1) and disclosing it to the appellant cannot constitute an unjustified invasion of the affected party's personal privacy under section 21(1).

[13] The appellant submits that if the "Access/Correction Request" form was filled out by an individual, it was completed in the context of a professional inquiring about a competitor and should not be protected under section 21(1) of the *Act*.

[14] The IPC has found in a number of previous orders and privacy complaint reports that the name of an individual who submits an access request under the *Act* qualifies as that individual's "personal information" under the definition of that term in section 2(1).² However, in all of those cases, these individuals were identified in a personal capacity, not a business, professional or official capacity.

[15] In Order PO-2764, Commissioner Brian Beamish addressed a situation that is somewhat similar to the facts before me. The information at issue in that case was the name of an individual who had submitted an access request for the documents that various bidders had made to the Ontario Realty Corporation (ORC) in response to a request for qualification (RFQ). As in the appeal before me, the ORC informed the IPC that this individual was an unsuccessful participant in the RFQ process.

[16] In assessing whether this individual's name qualified as his "personal information," Commissioner Beamish referred to section 2(3) and stated, in part:

The context in which the request form was filed and the information contained in the request form itself is relevant. The appellant sought access to submission and evaluation records relating to an identified RFQ process initiated by the ORC in which his employer and/or a business that he owned participated. Therefore, he sought access to information relating to the business relationship between the ORC and his own business and that of a number of other businesses.

[17] For this and other reasons, Commissioner Beamish found that this individual's name, as it appeared in the access request form, was not his "personal information" because it related to him in a business capacity, not a personal capacity. Consequently, he found that this individual's name could not qualify for exemption under the personal privacy exemption in section 21(1) of the *Act* and upheld the ORC's decision to disclose

² See Orders PO-3550, PO-3551, PO-3552, PO-3553, PO-3554, PO-2488, P-27, M-32 and P-370. See also Privacy Complaints MC-040012-1, MC-05005-1 and MC-050034-1.

this information.

[18] I agree with Commissioner Beamish's reasoning and find that it is applicable in the appeal before me. During mediation, the ministry stated that the individual who filed the access request for the appellant's winning proposal was one of the other bidders in the RFP competition. In my view, this is ample evidence that the affected party filed his access request in a business capacity and not in a personal capacity. It appears that the affected party may have put his residential address on the "Access/Correction Request" form but this does not, in my view, change the fact that he was seeking the appellant's winning proposal for business rather than personal reasons.

[19] In short, I find that the affected party's name identifies him in a business capacity in the "Access/Correction Request" form. Consequently, in accordance with section 2(3) of the *Act*, his name does not qualify as his "personal information." Given that the personal privacy exemption in section 21(1) of the *Act* only applies to "personal information," I find that this exemption cannot apply to the affected party's name, and it must be disclosed to the appellant.

ORDER:

1. I order the ministry to disclose the affected party's name to the appellant. I have included a copy of the "Access/Correction Request" form with this order and have highlighted in green the parts of this record that must not be disclosed to the appellant. To be clear, only the non-highlighted parts of this record should be disclosed. The ministry should disclose this information to the appellant by **March 7, 2016** but not before **February 29, 2016**.

Original Signed By: _____
Colin Bhattacharjee
Adjudicator

January 28, 2016 _____