Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-4050

Appeal PA14-190

Ministry of Natural Resources and Forestry

July 20, 2020

Summary: A First Nation submitted a request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) to the Ministry of Natural Resources and Forestry for information identifying all registered trappers in the Chapleau District. The ministry granted access to the trapline area numbers, but denied access to the names of the trappers associated with each area number under the mandatory personal privacy exemption in section 21(1) of the *Act*. On appeal to this office, affected party trappers and an association representing trappers were notified and their views on disclosure sought. With consideration of the representations of the ministry, the First Nation, and the affected parties, the adjudicator finds that the names of the trappers associated with trapline area numbers do not fit within the definition of "personal information" in section 2(1) of the *Act*. Given this finding, the names cannot be withheld under section 21(1), and the adjudicator orders the information disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, as amended, sections 2(1) (definition of "personal information"), 2(3), 21(1); *Fish and Wildlife Conservation Act, 1997*, SO 1997, c 41, as amended, sections 2(1), 6(1)(d), 48(1), 48(3); O. Reg. 666\98 (Possession, Buying and Selling of Wildlife) and O. Reg. 667\98 (Trapping).

Orders Considered: Orders P-1141, PO-2225, and PO-3617.

Cases Considered: *Ontario Medical Association v. (Ontario) Information and Privacy Commissioner*, 2017 ONSC 4090; aff'd, 2018 ONCA 673; leave application dismissed, 2019 CanLII 29760 (SCC).

OVERVIEW:

[1] This order is about the disclosure of the names of registered trappers in Ontario's Chapleau District under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act)*.

[2] Under section 10(1) of *FIPPA*, every person has a right of access to information in the custody or under the control of an institution, unless the information is exempt from disclosure,[1] or the head of the institution concludes on reasonable grounds that the request is frivolous or vexatious. In this appeal, the Ministry of Natural Resources and Forestry argues, with support from the Ontario Fur Managers Federation and individual trappers, that the information sought by a specific First Nation is exempt under the mandatory personal privacy exemption in section 21(1).

[3] Section 21(1) of the *Act* prohibits the disclosure of personal information unless one of the exceptions set out in sections 21(1)(a) to (f) applies. The protection offered by section 21(1) extends only to personal information. It does not protect all types of information and, specifically, it does not apply when the information at issue does not fit within the definition of "personal information" in section 2(1) of the *Act*, as is the case here.

BACKGROUND OF THE APPEAL:

[4] The Ministry of Natural Resources and Forestry (the ministry or the MNRF) received the following access request from a First Nation[2] made under *FIPPA*:

> Records indicating the name of each registered trapper and their associated registered trapline area number in the Chapleau District.[3]

[5] The request was for the information from the calendar year of 2013. In response, the ministry identified a six-page list, the "Trapper Summary" that provides, among other information, the identifying number for the various trapline areas ("trapline area numbers" or "CP numbers")[4] and the corresponding name of the trapper registered to trap in a particular trapline area. The ministry granted access to trapline area numbers,

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[1] Exemptions from the right of access are set out in sections 12 to 22 of the *Act.*

[2] The appellant consented to the disclosure of its identity to the other parties during the inquiry. However, in keeping with the IPC's usual practice, the appellant is referred to in this order as "the First Nation."

[3] Chapleau District refers to an administrative division within the MNRF's Northeast Region.

[4] These terms are used interchangeably in this order.

but denied access to the names of the trappers based on the mandatory personal privacy exemption in section 21(1) of the *Act*.

[6] The First Nation appealed the ministry's decision to this office and a mediator was appointed to explore the possibility of resolving the appeal. At the outset of the appeal, the appellant filed with this office, and served the ministry and the Attorneys General of Canada and Ontario with, a Notice of Constitutional Question (NCQ) challenging the applicability of section 21(1) of *FIPPA* to the information at issue in this appeal.[5]

[7] During the mediation stage, the appellant clarified that it was seeking access to the names of *all* registered trappers attached to the traplines in the Chapleau District, along with their CP numbers, not just the names of the head trappers who hold trapline licences.[6] Following this clarification, the ministry issued a supplementary decision confirming that there were now approximately 225 individuals whose names were responsive to the request, rather than the original 85. The ministry maintained its position that all of the trappers' names were exempt from disclosure under section 21(1). In response to this, the appellant contended that the "public interest override" in section 23 of the *Act* applies, because there is a public interest in the disclosure of the trappers' names that outweighs the purpose of the personal privacy exemption.[7]

[8] The parties were not able to resolve this appeal through further mediation and it was transferred to the adjudication stage.

[9] The IPC sought representations from the ministry regarding the application of sections 21(1) and 23. In its response, the ministry argued that the Ontario Fur Managers Federation (OFMF) and the listed trappers should also be notified to seek their views on disclosure. The OFMF acts as a representative of trappers in Ontario[8] and also, by arrangement, issues trapping licences on the ministry's behalf. At that time, the OFMF was notified of the appeal and its representations were sought. Following a hold on the appeal requested by the parties to pursue discussions, the ministry and the OFMF provided representations to the IPC. The First Nation was given an opportunity to respond

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[5] The Department of Justice Canada subsequently advised this office that the Attorney General of Canada did not intend to intervene or make submissions.

[6] There are subtle differences in the terminology: only head trappers are "trapline licence holders," but "registered trappers" includes other licenced trappers who can work on traplines. See discussion of the types of registered trappers under "Context of the request", below.

[7] Under section 23 of the *Act,* "An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

[8] Membership in the OFMF is voluntary, but it is recognized by the ministry as representing the interests of trappers in Ontario with respect to resource management issues.

and their representations were shared with the ministry for sur-reply. The reply and sur-reply representations of the ministry and the appellant addressed the First Nation's NCQ, as well as sections 21(1) and 23.

[10] Subsequently, the individual listed trappers whose names are at issue were notified. Once indications of interest in participating in the appeal were received, the IPC contacted the OFMF and the trappers who had responded to notification, explaining that the information at issue consisted of approximately 225 trappers' names with an associated trapline area number for each name. The IPC confirmed that while the trapline area numbers had already been disclosed, the names of the registered trappers had not. The OFMF and individual trappers were asked to provide submissions regarding whether the names of the registered trappers constitute their *personal* information, as opposed to business or professional information according to section 2(3) of the *Act*. Section 2(3) is an exception to the personal information definition that is considered in detail in this order.

[11] The OFMF provided representations on the issues. Some of the trappers also did, either by adopting the OFMF's representations or by making their own representations.

[12] The First Nation was asked to provide a reply to those submissions and did so. Finally, the OFMF and the ministry were given an opportunity to provide further representations in response to the appellant's. While the OFMF did so, the ministry declined to provide further representations.

[13] In this order, I find that the names of the trappers on the Chapleau District list identified as responsive by the ministry are not "personal information" because they fit within the section 2(3) exception to the personal information definition in section 2(1) and, further, because disclosure of the names would not reveal anything of a personal nature about the individuals. As the names are not "personal information" under the *Act,* they are not exempt under section 21(1), and I order the ministry to disclose them to the First Nation.

RECORDS:

[14] At issue in this appeal is a six-page list, the "Trapper Summary," containing approximately 225 names of registered trappers in 2013.[9] The associated CP number for each name has already been disclosed by the ministry.

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[9] The "Trapper Summary" also contains other information about the individuals, but the appellant seeks none of that additional information.

DISCUSSION:

The constitutional issue need not be addressed

[15] The ministry denied access to the trappers' names based on the mandatory personal privacy exemption in section 21(1) of the *Act*. In its NCQ, the First Nation stated that it intended to challenge the constitutional applicability of section 21(1) of the *Act* to its request for information.[10]

[16] Among other positions taken in the NCQ, the First Nation argued that:

> Registered trappers are commercial proponents and should not be uniquely shielded from normal disclosure.

[17] Whether trappers are "commercial proponents" is determinative of my finding that the trappers' names do not constitute "personal information" in this context and therefore do not qualify for exemption under the personal privacy exemption in section 21(1).

[18] It follows that there is no need for me to review the other issues raised by the parties, including the constitutional arguments.[11]

The proper question to be asked is "why should the First Nation not be given access?"

[19] Before explaining my decision further, below, I will address the ministry's argument that:

> … the names and identifiers of those who hold trap lines is irrelevant to the question of whether a First Nation has some legal right to an exclusive allocation of trap lines. That question is answered by an examination of the treaties, aboriginal rights and the history of the area. The ministry has released the information relevant to that dispute and the names of individual trappers would not further the interests of the [First Nation].

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[10] The First Nation wanted the information to determine for itself whether the ministry's allocation of traplines violated the First Nation's treaty rights under section 35(1) of the *Constitution Act, 1982.* The legal basis of the First Nation's position, that section 21(1) of the *Act* is constitutionally inapplicable in the circumstances of this appeal, is stated as follows: the Crown has breached the appellant's harvesting rights under Treaty 9, which are recognized and affirmed in section 35(1) of the *Constitution Act, 1982*; and has also breached its duty to consult and accommodate the appellant, pursuant to the appellant's Aboriginal and treaty rights recognized and affirmed in section 35(1) of the *Constitution Act, 1982.*

[11] This is consistent with the message conveyed to the parties, in correspondence sent prior to the notification of individual trappers, that I "considered the possibility this appeal could be determined without reference to the appellant's constitutional arguments."

[20] I start by agreeing with the appellant that, "*FIPPA* provides [the First Nation], as it does any other citizen or member of the public, with a statutory right of access to information, subject to limited and specific exemptions, none of which apply." The First Nation's position is supported by the statutory requirement that the ministry establish a basis for withholding the record. It is not the other way around.

[21] In Order PO-3617, Adjudicator John Higgins addressed an argument, by affected parties who opposed disclosure of the names of Ontario's top 100 OHIP billing doctors, that the appellant in that appeal had failed to establish a rationale for disclosure.[12] In dismissing the affected parties' argument, Adjudicator Higgins observed, as I did above, that "[s]ection 53 of the Act makes it clear that the ministry bears the burden of proving the application of the exemptions it has claimed."[13]

[22] The Divisional Court, in *Ontario Medical Association v. (Ontario) Information and Privacy Commissioner*,[14] upheld Adjudicator Higgins' decision ordering disclosure of the doctors' names, and on this point stated:

> The other argument made by the applicants is that Ms. Boyle had failed to establish a proper rationale for why the information that she sought ought to be disclosed to her. In other words, Ms. Boyle had failed to establish a pressing need for the information or how providing it to her would advance the objective of transparency in government.
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> Two observations can be made on this argument. The first observation is that Ms. Boyle does not need a reason to obtain the information. *FIPPA* mandates that information is to be provided unless a privacy exception is demonstrated. Once it is determined that the information is not personal information, there is no statutory basis to refuse to provide it.
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> The second observation is that this argument ignores the well-established rationale that underlies access to information legislation. That rationale is that the public is entitled to information in the possession of their governments so that the public may, among other things, hold their

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[12] In that appeal, unlike the one before me, the appellant had not provided representations.

[13] Section 53 states: "Where a head refuses access to a record or part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head." At para. 17 of Order PO-3617, Adjudicator Higgins also referred to Ontario (Worker's Compensation Board) v Ontario (Assistant Information and Privacy Commissioner), 1998 CanLII 7154 (CA), observing that "…The legislature intended that fact finding and the weighing of the contents of the written submissions be dealt with by the Commissioner."

[14] 2017 ONSC 4090; aff'd, 2018 ONCA 673; leave application dismissed, 2019 CanLII 29760 (SCC).

governments accountable. As La Forest J. said in *Dagg v. Canada (Minister of Finance)*, 1997 CanLII 358 (SCC), [1997] 2 S.C.R. 403 at para. 61:

> The overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.

and further at para. 63:

> Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.

The proper question to be asked in this context, therefore, is not "why do you need it?" but rather is "why should you not have it?".

[23] I agree with, and adopt, these reasons in determining the issues in this appeal.

The names associated with CP numbers are not "personal information" according to the definition in section 2(1) of *FIPPA*

[24] The parties opposing disclosure in this appeal, the ministry, the OFMF and affected party trappers, maintain that the trappers' names are exempt from disclosure under the mandatory personal privacy exemption in section 21(1).

[25] Under section 21(1) of the *Act,* "a head shall refuse to disclose personal information to any person other than the individual to whom the information relates" unless an exception applies. This mandatory personal privacy exemption only applies to "personal information," which is defined in section 2(1) of the *Act* as recorded information about an identifiable individual, including "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" in paragraph (h).

[26] The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information.[15]

[27] However, to qualify as personal information, the information must be about the individual in a personal capacity. There are exceptions to the definition of personal

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[15] Order 11.

information and the relevant one in this appeal is section 2(3) of the *Act*, which provides that:

> 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.[16]

[28] The parties were specifically asked to comment on section 2(3), which affirms the general rule that information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[17]

[29] The parties were also asked to explain why or how, if the information is about an individual in a professional, official or business capacity, the information could reveal something of a personal nature about the individual.[18] The parties were advised that if I were to find that the information at issue – the trappers' names – does not reveal something of a personal nature about the trappers, it cannot be exempt under section 21(1), and it would be ordered disclosed, if no other exemptions apply to it.

Context of the request

[30] The registered trapline system in Ontario was established in the 1940s and trapping in the province is currently regulated under the *Fish and Wildlife Conservation Act, 1997* (the *FWCA*).[19] Trapping is defined in section 1(1) of the *FWCA* to mean the use of a body-gripping trap, box trap, cage trap or net to capture an animal or invertebrate.

[31] The appellant relies on the following definitions of the terms used in its request for the names of the individuals associated with each registered trapline area number in the Chapleau District:

> "registered trapper" means a trapper licenced and registered to trap under Ontario [Regulation] 667/98, *Trapping,* under the *Fish and Wildlife Conservation Act*;

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[16] Section 2(4) also states that "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."

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

[18] If the disclosure of the information would reveal something of a personal nature about the individual, it may still qualify as personal information even if information relates to an individual in a professional, official or business capacity. See Orders P-1409, R-980015, PO-2225 and MO-2344.

[19] *Fish and Wildlife Conservation Act*, 1997, SO 1997, c 41.

> "registered trapline area" means the area that is registered to a particular trapper under Ontario Regulation 667/98, *Trapping,* under the *Fish and Wildlife Conservation Act*; and
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> "registered trapline area number" means the number associated with that area, which is also known as a "CP number".

[32] The provincial government's website provides information about the trapping of furbearing animals in Ontario, including the types of trapping licences available. The trapping licence identifies the area the trapper can trap, the number of animals of each species the trapper is allowed to catch and gives harvest quotas for some species.[20] Of the five types of trapping licences, the following two are relevant in this appeal, given the content of the record:

- head trapper (Registered Trapline Area): a head trapper trapping in the Registered Trapline Area assigned by the licence may use a licenced helper, but remains solely responsible for making sure his/her helpers follow laws and regulations; and
- helper trapper (Registered Trapline Area): may trap only within the areas on the head trapper's licence and for furbearing mammals that count towards the head trapper's quota.[21]

[33] The government's website also sets out the qualifications for licences granted to these two types of trappers.

[34] To provide context for its request, the First Nation submits that under the *FWCA*, the ministry manages a scheme in which individuals may become licenced to trap and sell furs commercially, and in so doing grants licencees statutory permission to use a specified registered trapline area on Crown land. The appellant adds that:

> Chapleau District is an [ministry] management area; it is also within Treaty 9 territory, at the core of the traditional territory of [the First Nation]. The [First Nation] and its members hold a few of the registered traplines in Chapleau District, but most are held by others. The [First Nation] wants to know who has been granted these exclusive trapping privileges in the core of its traditional territory and made an access request for this information.

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[20] https://www.ontario.ca/page/trapping-ontario.

[21] The other three types are: 1) youth (age 12-15), who can participate in most aspects of trapping, including setting traps and preparing and selling the pelts of furbearing mammals, but only under direct supervision of a licenced trapper who is at least 18 years old; 2) landowner, for those who trap only on their own property; and 3) resident, for those who trap on private lands with written permission from the landowner or on Crown land identified in the licence that is not part of a registered trapline area.

Representations

The ministry

[35] The ministry provides the following context for its refusal to grant access to the names of the trappers:

> Trapping has been a mainstay in Northern Ontario for time and memorial [sic], certainly before the coming of the Europeans. It has moved beyond a mere economic activity to form part of the natural heritage of Northern Ontario. From the late 20th Century there has been a marked decline in the demand for furs and fur products due to changes in fashion and in response to campaigns from animal rights groups. Yet despite this decline, almost 8000 licences to trap have been issued by the Ministry's partner the Ontario Fur Managers Federation. There has been an increase of over 3000 licences to trap since 1997, notwithstanding the declining market for furs. This increase in licences in a declining market demonstrates that trapping is not done exclusively for commercial purposes. There are individuals who hold trapping licences and trap as part of the Northern cultural heritage or lifestyle. In terms of gross over simplification, they trap as part of their recreational activities. It is the Ministry's understanding based on anecdotal evidence, that only 20% of those who trap are deriving a substantial part of their income from trapping.

[36] The ministry says the OFMF would have the most specific information on the income-generating nature of trapping based on data from its members, but states that the "majority of trappers trap with an aim to recover their costs or a portion thereof." These individuals, the ministry suggests, can be likened to individuals who operate hobby farms and derive money from such leisure activities in order to recover the costs of such activities. The ministry says that since only those individuals whose information is at issue can identify whether they are trapping for income purposes or heritage/recreational purposes, their views must be sought.

[37] The ministry relies on Order P-1141 "where it was held that the release of the personal identifiers of trappers constituted an unjustifiable invasion of privacy." The ministry submits that the withheld information is personal information within the meaning of paragraphs (a), (d) and (h) of the definition in section 2(1) of the *Act*.[22] The ministry explains that the severed portions of the list also identify the individual's address, whether

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[22] These parts of the definition at s. 2(1) of *FIPPA* state: (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual; (d) the address, telephone number, fingerprints or blood type of 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.

the individual is a minor, has an indigenous/non-indigenous name, and whether he/she traps.

[38] The ministry acknowledges that some individuals listed in the record may be trapping for commercial purposes, but says it has no means of identifying why a person holds a licence. Therefore, the ministry maintains, it is obliged to protect personal privacy in keeping with the spirit and intent of the *Act* and, having no evidence to the contrary, must operate on the assumption that the names on the list are "personal information."

[39] The ministry states that the trapline area numbers were disclosed because they are not personal information, but argues that the basis for withholding the names is that the trapline area number, when it is combined with an individual's name, reveals that a particular individual traps. Regarding the appellant's argument that because a trapping licence authorizes commercial sales, the names of the licencees are brought within the scope of the exception in section 2(3), the ministry maintains that a trapping licence is not necessarily a commercial licence. The ministry refers to section 6(1) of the *FWCA*, which prohibits trapping without a licence, and continues:

> The requirement for a licence makes no distinction between commercial and recreational trapping. Indeed, there is no reference to commercial activity. It merely requires that someone who wishes to trap for whatever reason have a licence. The regulations around trapping, O Reg 667 /98,[23] do not reference commercial trapping. They merely regulate trapping.
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> There are regulations that deal with the possession, sale and trade of pelts and hides. That regulation, O Reg 666\98,[24] applies to pelts and hides regardless of how they have been harvested, e.g., whether they have been hunted or trapped. That regulation makes a distinction between commercial and personal use. Regardless of how they are harvested, the obligations around pelts and hides that are used for commercial purposes differ from those for personal use. Therefore, the issuance of a trapping licence, contrary to the appellant's assertion, does not automatically bring the person who traps into the commercial sphere and into the ambit of s. 2(3).

The Ontario Fur Managers Federation

[40] The OFMF submits that the names of all registered trappers in the MNRF's Chapleau District is information about identifiable individuals, because disclosure of the names would reveal other personal information about them (paragraph (h) of the definition). The OFMF argues that since trapline area numbers have already been

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[23] O. Reg. 667/98: Trapping.

[24] O. Reg. 666/98: Possession, Buying and Selling of Wildlife.

disclosed, the disclosure of the names would connect individuals with specific traplines, thereby resulting in the revelation of other personal information about the individual according to paragraph (c) of the definition – any identifying number, symbol or particular assigned to the individual. The OFMF suggests that disclosure of the names would lead to the disclosure of additional personal information, such as addresses and telephone numbers as well as dates of birth.

[41] The OFMF also maintains that the information is about registered trappers in a personal capacity, because they may or may not trap for profit and, further, if they do trap for profit, the information will reveal where that individual works, which is information "of a personal nature."

[42] The OFMF argues that since the authority of the ministry to collect personal information is derived from the *FWCA*, this collection is limited, under the "notice of collection" on the ministry's licence application form, to the stated purposes of identification, enforcement, research and administration. Any disclosure outside those stated purposes, the OFMF argues, is not allowed because the ministry's authority "does not extend to providing information for the general interest of the public."

[43] I note that this argument alludes to Part III of the *Act*, relating to the collection, use and disclosure of personal information by institutions[25] and, specifically, to section 41(1)(b), which prohibits an institution from using information except "for the purpose for which it was obtained or compiled or for a consistent purpose." However, section 42(1)(a) of the *Act*, which deals with permitted disclosures, makes equally clear that while the ministry shall not disclose personal information in its custody or under its control, it is permitted to do so in accordance with Part II, the part of the *Act* under which the First Nation submitted its request and under which this appeal is being decided. I will not address this argument further.

The First Nation

[44] The First Nation submits that the ministry bears the burden of proof to justify its refusal to disclose the names of registered trappers in association with their trapline area number, and further submits that the ministry has failed to satisfy that burden. The appellant argues that names are not personal information under the *Act* in and of themselves, because they depend on a connection with other personal information to make them personal (paragraph (h) of the definition). The appellant adds that by virtue of section 2(3), business information is also not personal information.

[45] The First Nation submits that paragraphs (a) to (g) of the definition of personal information in section 2(1) are not relevant in this appeal. The First Nation says, for

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[25] The notice of collection on the Ontario Trapping Licence Application form, for example, is required by section 39(2) of the *Act.*

example, that paragraph (c) (any identifying number, symbol or particular assigned to the individual) is not relevant because a trapline area number refers to a trapline on Crown (public) land and, therefore, the trapline area is not "about an individual" but rather is about public property.

[46] For similar reasons, the First Nation also disputes the arguments of the ministry and OFMF about paragraph (h) of the definition, under which an individual's name is personal information if it appears with or would reveal other personal information about the individual. Specifically, the appellant submits that it is not possible to view a registered trapline area as personal information about an individual, since a registered trapline area is "a piece of 'public land' containing public resources, which are managed by the government, and not owned by the registered trapper."

[47] The First Nation maintains that a trapline area is not about an individual, even though it may be associated with an individual for a period of time due to that individual having been issued temporary statutory rights to use the area under the *FWCA*. The appellant submits that a trapline area does not reveal any immutable or inherently personal characteristic about an individual, such as their race, religion, health status, family status, personal views, or home address. The First Nation relies on Order 23 in submitting that a trapline area number is information about a property, not a person.

[48] The appellant submits that the ministry's decision to disclose the CP numbers carries with it an implicit recognition that there is nothing personal, sensitive or private about the number itself. Accordingly, the appellant submits that the association of that number with the registered trapper's name means that the information does not fit within the definition of "personal information" in paragraph (h) of section 2(1) of the *Act.* Since the information sought is not personal information, it cannot be exempt from disclosure under section 21(1).

[49] The First Nation argues, in the alternative, that even if the trappers' names qualify as "personal information" in this context, the exception in section 2(3) of the *Act* applies, because the name constitutes "information about an individual in a business, professional or official capacity." The appellant notes that under the *FWCA*, every registered trapper is not only legally licenced to trap but is also legally licenced to sell what he or she traps.[26]

> In other words, all of the individuals whose names would be released in this request have applied for and obtained a government licence that allows them to harvest a public resource in a specified public area, and then to sell those products commercially on the international market.

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[26] Section 48(3) of the *FWCA.*

[50] The First Nation challenges several points raised by the other parties against the exception in section 2(3), including that a registered trapper "may or may not trap for profit" (OFMF) and that due to the declining market in furs, "anecdotally" only 20% of trappers are "deriving a substantial part of their income from trapping" (the ministry). The appellant argues that this is not a proper application of the test under section 2(3). The First Nation submits that the *Act* does not require the ministry or the IPC to evaluate the profitability or income level associated with business activities before finding the exception in section 2(3) to apply. Rather, the appellant submits, the distinction between personal and business information "does not depend on the size or scale of the particular undertaking: any sale or commercial transaction brings a person into the realm of business activity under the *Act*." The appellant cites Order PO-2225 for the proposition "that the large-scale landlord and the individual homeowner renting out a basement apartment are both operating in the business context, just on a very different scale. So too are individuals operating a small family farm [Order PO-2295] and operators of small or temporary mobile businesses, such as hot dog carts [Order MO-2342]." Further, the appellant continues,

> Our position is that as a trapping licence authorizes commercial sales, the licence itself brings the information sought into the business realm under s. 2(3). This reasoning was used by the IPC in Order MO-2234, where it held that a taxicab driver's operator licence is a commercial licence that therefore falls under s. 2(3), "as it allows individuals to drive taxicabs and derive income for themselves." [paragraph 81] A commercial licence brings a person into the business realm under s. 2(3) of the *Act*. All the individuals whose names are at issue in this appeal have sought and obtained a commercial licence.
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> No matter the size of the business or whether it is profitable, it is well established that commercial transactions bring an activity outside of the personal realm into the business realm.

[51] Finally, the appellant says, Order P-1141 does not provide a reasoned basis on which to conclude that the information sought in this appeal meets the definition under section 2(1). In Order P-1141, unlike in this appeal, individuals' addresses were sought as part of the request and paragraph (d) of the definition explicitly provides that individuals' addresses constitute personal information under the *Act*. The First Nation further disputes the OFMF's suggestion that disclosure of the trappers names would result in the disclosure of personal information, such as their addresses.

The parties' contrasting reply and sur-reply representations

[52] In its later representations, the OFMF adopts the MNRF's representations, adding that it views Order PO-3617 (the OHIP billings order) as concerning facts that stand "in

useful contrast" to the circumstances of this appeal, particularly in relation to the application of the public interest override in section 23.[27] The OFMF's reply representations otherwise only incidentally touch on the personal information and personal privacy issues, arguing that disclosure here "may very well result in a multitude of potential consequences for the individuals whose names have been made public and for whom there existed an expectation of privacy without any corresponding benefit to the public or even to the [First Nation]."

[53] In response to that argument, the First Nation maintains that the individuals who are allocated a trapline are receiving a public benefit, because when the MNRF grants someone a registered trapline area in the Chapleau District, it is "thereby providing that person with exclusive trapping privileges that lie within the core of the First Nation's traditional territory."[28]

[54] The First Nation refutes the ministry's position that since the obligations outlined in O. Reg. 666/98 around use of pelts and hides for commercial purposes differ from those for recreational purposes, the issuance of a trapping licence does not automatically bring the person who traps into the commercial sphere (and into the ambit of the personal information exception in section 2(3) of the *Act*). The appellant states that even if a person with a legal licence to trap chooses not to sell, or traps only recreationally, they are still legally entitled to sell.

The affected party trappers

[55] This office made significant efforts to notify all individuals whose names appear on the list at issue to seek their views on the disclosure of their name under the *Act*.[29] Approximately 120 of the 225 listed individuals responded to the initial notification letters expressing an interest in participating in the appeal; these individuals were sent a more detailed description of the issues along with a request for their submissions. Of the

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[27] The OFMF refers to the finding in Order PO-3617 of a compelling public interest in the disclosure of the names of the 100 physicians who billed the highest total amount to OHIP for 2008-2012 that clearly outweighed the purposes of the relevant exemption (at paras. 93-103 of Order PO-3617) and argues that it is distinguishable from this appeal because: individual permit holders are not individuals who receive significant sums of money from the province; this is an "entire list of permit holders, not a subset of individuals as in the case of the physicians;" and there is no clear relationship between the trappers' names and the public interest in "transparency of government operation."

[28] The First Nation's representations also address the acknowledgement of the Royal Commission on Aboriginal Peoples that "Land is absolutely fundamental to Aboriginal Identity ... land is reflected in the language, culture, and spiritual value of all Aboriginal peoples." They refer to consideration of the fundamental importance of land to Indigenous peoples for identity, spirituality, laws, traditions, culture, and rights in cases like *Platinex Inc. v Kitchenuhmaykoosib Inninuwug First Nation*, 2006 CanLII 26171 (ON SC).

[29] As stated above, there are 225 names on the list, but some names appear more than once.

individuals who responded, many indicated they wanted me to take the OFMF's representations as their position in this appeal. However, there were others who described their experiences with trapping and provided me with direct insight into their own objections to disclosure of their names.

[56] Many said explicitly that they did not want, and did not consent to, disclosure of their "personal information," including their name. Others said that if they had a choice, they would not want their name released. Some individuals commented on their trapping experience and others expressed views about this specific access request. Still other individuals identified the age of the information at issue.

[57] There were individuals who responded by expressing concern about the consequences of their identity being known, specifically:

- That disclosure might lead to contact, or harassment, of them or their family. For example, one said, "No one has control over who obtains it from people it's released to, or what action they may take against me personally." Others simply said they did not want to be harassed at their trapline.

- "Let's be realistic, trapping [is] not on top of many people's lists of something that should be happening." And, further, that if they are identified to "anti-trappers," their livelihood could be destroyed, and they would "end up on welfare."

- "My activities also include the activities of non-trapping law abiding residents of Ontario (family and friends) and thus any actions directed towards myself will no doubt impact them."

Analysis and findings

[58] For the information at issue to be exempt under section 21(1), it must qualify as "personal information," as that term is defined in the *Act*. The determination of what is "personal information" is made based on the information itself and the context in which it appears. The parties opposing disclosure of the information claim, variously, that the information fits within paragraphs (a), (c), (d) and (h) of the definition in section 2(1) which state:

> "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;
> >
> > (c) any identifying number, symbol or other particular assigned to the individual,

> (d) the address, telephone number, fingerprints or blood type of 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.

[59] To begin, it is clear that the First Nation does not seek the types of information contemplated by paragraphs (a) and (d), nor have the other parties provided any particulars to support their claim that disclosure of the trappers' names would somehow lead to the disclosure of these other types of information. I find, accordingly, that these paragraphs have no application in this appeal.[30]

[60] Rather, the information at issue consists of the names of individuals granted a licence to trap a specific trapline area in the Chapleau District in the 2013 calendar year. Given that the trapline area (or CP) number associated with each of the trappers' names has already been disclosed, the question is whether each trapper's name, when connected to the disclosed corresponding CP number, qualifies as personal information. In my analysis of the issue, I apply the test in Order PO-2225, which I discuss in some more detail below.

[61] Before turning to this analysis, however, I will address the ministry's reliance on Order P-1411. I find this order distinguishable on the facts. At issue in that appeal were the name and street address of individuals to whom a trapping licence was issued, along with other information about the licence.[31] In that appeal, the trapping was taking place on private, not Crown, land with the permission of the property owner.[32] From my review of Order P-1411, it is clear that the adjudicator's finding that the records contained the personal information of the two trappers was based on the array of information at issue in that appeal, which, she concluded, was recorded information about an identifiable individual for the purpose of the introductory wording of the definition in section 2(1). The section 2(3) exception to the personal information definition was not in force at the time Order P-1411 was decided in 2001. Moreover, even if Order P-1411 were analogous

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[30] However, see footnote 43 below, regarding the interaction of section 2(3) and paragraph (a) of the definition.

[31] The other details sought in Order P-1411 included the description of the parts of Ontario where the licensee was authorized to hunt or trap, the quotas applied to the licensee, the date of issue of the licence, and the land classification of the site by region and district.

[32] The ministry provided a copy of WilPr.1.1.7, the ministry's Fur Management, Trapper Licensing guidance document for "Allocation of head trappers for registered traplines," which expressly states that "This procedure is not intended to be applied to the selection of "helper" ('02') trappers on registered traplines (as helpers are selected at the discretion of the head trapper), nor to the selection of farmer, landowner or private land trappers." [Emphasis added.]

on the facts, I would not follow its analysis or conclusion on this issue.[33] I am instead persuaded by the relevance of the reasoning in the more recent Orders PO-2225 and PO-3617.

[62] As I noted above, for the information at issue to qualify as personal information, it must be about the individual in a personal capacity. The exception to the definition of personal information in section 2(3) of the *Act* which came into force in 2006 is relevant here; it excludes from personal information the "name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity." A name, for example, may constitute "personal information" under section 2(1) if it appears with other personal information about an individual, according to paragraph (h). However, if the names of individuals who hold trapping licences identify them in a business capacity, the exception in section 2(3) applies, unless disclosure of the names would reveal something inherently personal about the individuals, which would bring the names back into the realm of personal information under *FIPPA*.

[63] In the determination of whether information relating to the individuals in this appeal is "personal information," I have considered the *capacity* in which these individuals are acting, which decides whether the exception in section 2(3) may apply, and, next, the *context* in which their names appear. This approach was established in Order PO-2225, where former Assistant Commissioner Tom Mitchinson posed two questions that help to clarify the distinction between "personal information" under section 2(1) and information that relates to an individual in a "business 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 is inherently personal in nature?

[64] In Order PO-3617, referenced above, Adjudicator John Higgins explained how the template in Order PO-2225 informed the consideration of the term "individual" in the preamble of the definition of personal information, above, as well as the wording of the relevant paragraphs, in relation to information in the business, professional or official

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[33] Nor am I bound to do so, it being established that *stare decisis* does not apply to the previous decisions of tribunals. See *Weber v Ontario Hydro,* 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at paragraph 14.

sphere.[34] In this appeal, I apply the two-step analysis in Order PO-2225 to determine whether the information at issue is personal information under section 2 of *FIPPA*.

Step 1: 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?

[65] I agree with the First Nation, and I find, that the individuals whose names appear on the list are operating in a business, not a personal, context. While trapping may be considered an integral part of "the northern lifestyle" for some, this does not affect my finding that holding a trapping licence (and being registered as a trapper) takes place in a business context that is removed from the personal sphere, in the manner contemplated by the first part of the test in Order PO-2225.

[66] In coming to this conclusion, I have considered the evidence and representations before me and find the following to be indicators that the names appear in a business context.

[67] Section 6(1)(d) of the *FWCA* provides that no person shall hunt or trap furbearing mammals except with a licence and in accordance with the regulations. Under the *FWCA* and its regulations, only persons with this licence are also authorized to buy, sell or deal in the pelts of furbearing animals. Specifically, under section 48(3) of the *FWCA*, every registered trapper is not only legally licenced to trap, but is also legally licenced to sell what he or she traps.[35] The legislative scheme does not provide different licences for those who wish to trap, but not sell.

[68] To obtain a licence to harvest furs, a person must successfully complete the Fur Harvest, Fur Management and Conservation Course or have held a trapping licence within the previous five years.[36] The *FWCA* and its regulations require all licenced trappers to follow essentially the same set of rules, including the submitting of an annual Mandatory Season-End Harvest Report. This requirement is the same for all licenced trappers, regardless of the type of trapping licence they hold, the size of their harvest and whether they profited from the sale of their harvest. The individual licence holder must fill out the harvest report by recording, for each type of furbearer, the quantity of each furbearer harvested, the quantity shipped or sold and the quantity left on hand (not shipped). This

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[34] Order PO-3617, at paras. 69-70.

[35] Section 48(3) states, "Despite subsection (1)'s requirements for a licence, the holder of a licence to trap furbearing mammals may, without any other licence, sell all or part of the carcass of a furbearing mammals trapped by or on behalf of the holder of the licence, including the pelt."

[36] Section 11(1)(b), O. Reg. 667/98: Trapping.

language further supports a finding that the licencing is intended to authorize commercial activities.[37]

[69] In my view, the ministry's trapping licence system was not set up to contemplate "recreational" or "hobby" trapping. This conclusion is also supported by the ministry's "Bulletin FWBull.1.1.8, August 28, 2010, Fur Management,"[38] which the ministry referred to in its representations. The bulletin states, in part, that:

> In documenting the existence of [an] Aboriginal family member/trapper claim/connection to a registered trapline, the following should be considered:
>
> > only commercial fur harvesting involving the preparation and sale of raw pelts to Fur Dealers requires the issuance of an Ontario Trapping Licence and assignment to a registered trapline area; and
> >
> > fur harvesting for food, social and ceremonial purposes by Aboriginal communities who maintain a treaty right is subject to MNR's Interim Enforcement Policy.

[70] This suggests that Indigenous peoples in Ontario may harvest for both of the listed reasons – commercial and treaty right-based harvesting – while non-Indigenous individuals can only trap if they have a licence, which the bulletin describes as a commercial licence.

[71] I agree with the First Nation that because a trapping licence authorizes commercial sales, the licence itself brings the information sought into the business realm under the exception in section 2(3) of the *Act*. I observe that this reasoning has been applied to other types of commercial licences in past decisions, such as Orders MO-2234[39] and P-710.[40] Viewed in this way, it is (as the appellant submits) the legal entitlement of the

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[37] Trapping licence forms are available on the ministry's website and through the OFMF. With its representations, the OFMF provided a copy of the Ontario Trapping Licence Application (renewal), which includes the Mandatory Season-End Harvest Report. The Head Trapper Application form asks about the applicant's experience, including the "Number of trapping seasons of active commercial fur harvest (i.e. actively harvesting furbearers), …"

[38] Trapper Licensing – Criteria for Establishing a significant Aboriginal family connection to a registered trapline; referenced in the ministry's June 2015 representations.

[39] *Mississauga (City) (Re),* 2007 CanLII 46692: a taxi driver's operator licence found to be a commercial licence that therefore falls under section 2(3); see also Order MO-1858, where the adjudicator held that the holding of a taxicab licence is not something that relates to the individual's "personal life."

[40] In Order P-710, the adjudicator found that the names of individuals who were vendors of goods and services to the LCBO did not qualify as "personal information" because the identifying information related to the "business activities of these individuals."

licence holder to sell the hides or pelts of furbearing mammals that matters, not whether the licenced trapper intends to, or does, make use of the pelt personally or commercially pursuant to O. Reg. 666/98 (Possession, Buying and Selling of Wildlife).

[72] Past orders have also affirmed that the distinction between a personal and a business capacity does not depend on the size or scale of the undertaking. I agree with the appellant that the *Act* does not require an evaluation of the profitability or income level associated with business activities before finding the exception in section 2(3) to apply. Therefore, I reject the argument that the actual remunerative value of a trapping licence is relevant to the distinction between the personal and business contexts. Rather, I am satisfied that the legal entitlement to sell or carry out a commercial transaction in relation to furbearing mammals brings the holder of a trapping licence into the realm of business activity under the *Act.*[41]

[73] Accordingly, I conclude that the obtaining of a licence to trap takes place in a business context that is removed from the personal realm. This is true regardless of whether or not sales are made under the licence in any given year. Given my conclusion that the names of the individual trappers appear in a business context, I find that the trappers' names are excluded from the definition of personal information by virtue of section 2(3) of the *Act*.

[74] However, I must now determine whether the disclosure of the trappers' names, when connected to the disclosed corresponding CP number, would nonetheless reveal something that is inherently personal in nature.

Step 2: Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

[75] The general rule is that information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[42] However, as noted in Order PO-2225, even if the information appears in a business context, the following question must still be asked: would its disclosure reveal something that is "inherently personal"? In this appeal, therefore, is there something inherent to the names of the individuals who hold a licence to trap for a specific designated trapline area that would allow the information at issue to pass over to the personal realm?

[76] Based on the evidence provided, I conclude that the parties resisting disclosure have not established how the CP number associated with each of the trappers' names reveals anything of a personal nature about an individual. Rather, disclosing the names of the individual trappers, in conjunction with the CP numbers already disclosed by the

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[41] Supported by Orders PO-2225 (landlords), PO-2295 (small family farm) and MO-2342 (hot dog carts).

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

ministry, would reveal that these individuals are licenced to trap furbearing mammals in the ministry's Chapleau District and that they can, if they so choose, sell the pelts or hides. It would also reveal the geographic boundaries within which the trapper is licenced to trap. This, in my view, is akin to revealing where these individuals "work" when they are engaged in licenced trapping activity. The CP number in this context is analogous to a business address, which as noted above, section 2(3) makes clear is not personal information. Nor does the fact that an individual who traps may be judged by others for participating in this (commercial) activity make the information at issue "inherently personal."

[77] The First Nation sought to support its position that the information at issue, the CP number in particular, did not reveal anything personal about the individuals by emphasizing that the trapline areas are located on Crown land. However, my conclusion that disclosure of the trappers' names along with the associated CP number would not reveal something inherently personal about them would not be different if the licensed trapping activity were carried out on the individual's own property, rather than on Crown land. In either case, disclosure of the individual's name would reveal the same information: that they are authorized by the government to engage in a commercial activity in a specific location.

[78] As the requisite contextual analysis of the trappers' names and CP numbers does not support a conclusion that their disclosure would reveal something of a personal nature about the individuals, I find that the information at issue is not personal information within the meaning of section 2(1), and that disclosure of the listed trappers' names would not reveal personal information.[43]

[79] Before concluding, I would like to address briefly the submissions of the parties that expressed concern about harms they fear may come to pass if their names are disclosed. This includes the OFMF's concern that disclosure here "may very well result in a multitude of potential consequences for the individuals whose names have been made public and for whom there existed an expectation of privacy without any corresponding benefit to the public or even to the [appellant]." While the harms alleged would be considered under section 21(1), the personal privacy exemption, they do not factor into an analysis conducted to determine whether the record contains personal information.

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[43] In Order PO-3617, at paragraph 83, Adjudicator John Higgins pointed out that the application of section 2(3) also disposed of the argument that the physicians' names are personal information because they may reveal sex or ethnicity. Similarly, in this appeal, section 2(3) disposes of the ministry's argument that disclosure of a trapper's name "would indicate whether that person has an indigenous/non-indigenous name," thereby revealing whether the individual is Indigenous or not under paragraph (a) of the definition of personal information in section 2(1) of the *Act*, as "information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual."

[80] There are other exemptions in *FIPPA* that speak directly to anticipated harms irrespective of whether the information at issue is "personal information", notably, the exemption listed at section 20, which permits an institution to withhold information where disclosure "could reasonably be expected to seriously threaten the safety or health of an individual." None of the parties raised the section 20 exemption with respect to the disclosure of the trappers' names, and it is not before me to determine. In any event, the concerns expressed about the possible consequences of disclosure of the trappers' names in this appeal do not appear to be of a nature sufficient to establish the harms to safety or health contemplated by section 20.

[81] Given my conclusion that the trappers' name are not personal information, I find that section 21(1) does not apply. As the Divisional Court observed in *Ministry of Health*, above, "FIPPA mandates that information is to be provided unless a privacy exception is demonstrated. Once it is determined that the information is not personal information, there is no statutory basis to refuse to provide it."

[82] I will order that the names of the registered trappers, associated with each trapline area number, be disclosed to the First Nation.

ORDER:

1. I find that the names of the individuals listed as registered trappers in Chapleau District in 2013 as they appear on the record at issue along with their respective CP numbers, are not "personal information" and, therefore, that they are not exempt under section 21(1) of the Act.

2. I order the ministry to disclose the trappers' names, and their associated CP number(s), to the appellant by **September 3, 2020**, but not before **August 28, 2020**.

3. The timeline noted in order provision 2 may be extended if the ministry is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such requests.

Original signed by: July 20, 2020

Daphne Loukidelis
Adjudicator