

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4210

Appeal PA19-00532

Alcohol and Gaming Commission of Ontario

November 12, 2021

**Summary:** The appellant sought access, under the *Freedom of Information and Protection of Privacy Act* (the *Act*), to a specific Expression of Interest (EOI) application made to the Alcohol and Gaming Commission of Ontario (the AGCO). This application was made in response to an allocation lottery held by the AGCO to determine who could apply for a Retail Operator Licence (ROL) under the *Cannabis Licence Act, 2018*.<sup>1</sup>

The AGCO denied access to the record, citing the application of the mandatory third party information exemption in section 17(1) to the entire record and the mandatory personal privacy exemption in section 21(1) to portions of the record.

In this order, the adjudicator finds that the information in the record is not exempt under section 17(1), as the information in the record was not supplied in confidence, nor under section 21(1), as the information at issue in the record about individuals is business information, not personal information. The adjudicator orders the record disclosed, except for the email addresses and phone numbers that were not at issue in this appeal.

**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"), 2(3) and 17(1).

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<sup>1</sup> *Cannabis Licence Act, 2018*, S.O. 2018, c. 12, Sched. 2.

## OVERVIEW:

[1] This appeal is about a request for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to a specific Expression of Interest (EOI) application. The EOI was submitted online by a business to the Alcohol and Gaming Commission of Ontario (the AGCO) in response to a notice of an allocation lottery held by the AGCO to determine who could apply for a Retail Operator Licence (ROL) to operate a cannabis retail store.<sup>2</sup> The applicant was ultimately successful in obtaining a ROL.

[2] This lottery provided for a pre-qualification process that would require an applicant to demonstrate that it had already secured retail space that could be used as a cannabis retail store and had sufficient capital to open a cannabis retail store. This pre-qualification process was part of the government's efforts to ensure that operators selected to apply for licenses would have their stores up and running quickly, so as to combat the illicit cannabis market.

[3] Following notification to the applicant operator in question (now the affected party) under section 28(1) of the *Act*,<sup>3</sup> the AGCO issued its decision to deny access to the affected party's EOI in full on the basis of the mandatory exemptions in sections 17(1) (third party information) and 21(1) (personal privacy).

[4] The requester (now the appellant) appealed the AGCO's decision to the Information and Privacy Commissioner of Ontario (the IPC), and a mediator was appointed to explore the possibility of resolution.

[5] During mediation, the AGCO confirmed that it was claiming section 17(1) for the entire record and section 21(1) for some information found at pages 1, 6 and 11 of the record. The appellant claimed that the public interest override in section 23 applies to the record.

[6] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

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<sup>2</sup> Also referred to as retail premises in this order.

<sup>3</sup> Section 28(1) reads:

Before a head grants a request for access to a record,

(a) that the head has reason to believe might contain information referred to in subsection 17(1) that affects the interest of a person other than the person requesting information; or

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 21(1)(f),

the head shall give written notice in accordance with subsection (2) to the person to whom the information relates.

[7] The adjudicator initially assigned to this appeal decided to conduct an inquiry and sought representations from the AGCO and the affected party. Representations were received from the AGCO<sup>4</sup> only and sent to the appellant. The appellant provided representations in response, which were provided to the AGCO. The AGCO then provided reply representations. Although invited to make representations regarding the issues in this appeal, the affected party did not do so.

[8] The appeal was then transferred to me to continue with the adjudication of the appeal. After reviewing the file and the parties' representations, I provided the appellant with a copy of the AGCO's reply representations and invited the appellant to file sur-reply representations, which it did. I then sought and received further representations from the AGCO in response to the appellant's sur-reply representations.

[9] The appellant agreed to remove from the scope of the appeal the email addresses and telephone numbers of the affected party's contact and the owner of the proposed retail premises. Therefore, this information, found on pages 1, 6 and 11 of the record, is not at issue in this appeal.

[10] In this order, I find that the record is not exempt under section 17(1) and that it does not contain "personal information" as defined in section 2(1) of the *Act*. As section 21(1) can only apply to personal information, the section 21(1) exemption does not apply to the record. Given my finding, it is not necessary for me to determine the application of the public interest override in section 23. I order the AGCO to disclose the record to the appellant.<sup>5</sup>

## **RECORD:**

[11] The record at issue is the 15-page Expression of Interest Application (EOI) completed by the affected party on the AGCO's online service delivery portal. The EOI consists of:

- an Application Summary,
- a Confirmation of Retail Space form, and
- two form letters completed by the affected party's financial institution.

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<sup>4</sup> The AGCO provided both confidential and non-confidential information in its initial representations. Only the non-confidential information was shared with the appellant in accordance with the IPC's *Practice Direction 7*. Only the AGCO's non-confidential representations will be referred to in this order, though I have considered the AGCO's representations in their entirety.

<sup>5</sup> Less the email addresses and phone numbers of the affected party's contact person and the owner of the proposed retail premises, which was not at issue in this order.

[12] The AGCO states that it only provided representations on the following severances in the record:

<b>Page #</b>	<b>Portion of record</b>	<b>Description of information severed</b>	<b>Exemptions applied</b>
1-5	Five-page Application Summary (English)	Contact information of affected party on page 1	21(1)
6-10	Five-page Application Summary (French)	Contact information of affected party on page 6	21(1)
11	One-page Confirmation of Retail Space Form	Contact information of the owner of proposed retail premises	21(1)
11	One-page Confirmation of Retail Space Form	Affected party's responses regarding ownership and use of the retail premises	17(1)
12-15	Two letters of confirmation completed by the affected party's financial institution  - Commitment to Provide Letter of Credit and  - Cash or Cash Equivalents Capacity	Entirety of both letters of confirmation	17(1)

[13] As sections 17(1) and 21(1) are both mandatory exemptions, I will consider their potential application to any of the information in the record, not just the portions identified by the AGCO.

**ISSUES:**

- A. Does the mandatory third party information exemption at section 17(1) apply to the record?
- B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

## **DISCUSSION:**

### **Issue A: Does the mandatory third party information exemption at section 17(1) apply to the record?**

[14] The purpose of section 17(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,<sup>6</sup> where specific harms can reasonably be expected to result from its disclosure.<sup>7</sup>

[15] Section 17(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[16] For section 17(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information,
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly, and

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<sup>6</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

<sup>7</sup> Orders PO-1805, PO-2018, PO-2184 and MO-1706.

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 17(1) will occur.

***Part 1: type of information***

*Representations*

[17] According to the AGCO, the EOI contains the following information:

- a. Basic information about the applicant (the affected party),
- b. A number of questions and attestations to ensure the applicant was eligible to participate in the lottery,
- c. A Letter of Confirmation - Cash or Cash Equivalents, substantively in the form provided by the AGCO, from the applicant's bank or credit union confirming the applicant is in good standing and has the financial capacity necessary to obtain \$250,000 in cash or cash equivalents,
- d. A Letter of Confirmation - Commitment to Provide Letter of Credit, substantively in the form provided by the AGCO, from the applicant's bank or credit union, confirming that the applicant has the financial capacity necessary to obtain a Standby Letter of Credit in the amount of \$50,000 and that the Letter of Credit will be provided if the applicant is selected, and
- e. A document substantively in the form provided by the AGCO confirming that the applicant had secured a retail space and providing certain details about the proposed space.

[18] The AGCO withheld the record in full, but only provided representations on the information noted in the above chart. The AGCO states that the information is about the affected party's retail premises and includes the letters of confirmation from a financial institution, which were required for the EOI.

[19] The AGCO maintains that this information constitutes commercial and financial information. It submits that the ownership or lease of property surely relates to "the buying, selling or exchange of merchandise and services", and banking information must constitute "information relating to money and its use or distribution."

[20] The appellant states that the record is not a commercial document as it substantially consists of the completed AGCO application form that confirms that the affected party had secured a retail space and contains certain details about the proposed retail space. The appellant submits that:

Such a document is not a commercial document - it is not a lease, a contract, a marketing strategy or any other type of record that is generated in the normal course of business. It is, rather, simply a collection of some information that the AGCO required all applicants to provide...

The document is also not "financial information." [T]he information that the applicant provided about its retail space, on a non-commercial AGCO form, does not meet any of these definitions.

[21] The appellant submits that in the absence of specific representations from the AGCO, part 1 of the test has not been met for either:

- the basic information in the record about the affected party, or
- the affected party's responses in the record to a number of questions and attestations to ensure the affected party was eligible to participate in the lottery.

[22] The appellant concedes that the portion of the record that contains the letters of confirmation from the affected party's bank or credit union, which letters confirm that the affected party had the required financial capacity, would constitute commercial information.

[23] In reply, the AGCO reiterated its position that the ownership or lease of property is commercial information as it relates to "the buying, selling or exchange of merchandise and services", and banking information is financial information, as it constitutes "information relating to money and its use or distribution".

[24] As noted above, although invited to make representations regarding the issues in this appeal, the affected party did not provide any.

#### *Analysis/Findings re part 1*

[25] The types of information referred to by the AGCO are listed in section 17(1) and have been discussed in prior orders:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.<sup>8</sup> The fact that a record

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<sup>8</sup> Order PO-2010.

might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.<sup>9</sup>

*Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.<sup>10</sup>

[26] I agree with the AGCO, and I find, that the record contains commercial information, specifically that related to the obtaining of commercial space by the affected party for the operation of a cannabis retail store. As well, I find that the record contains financial information relating to money and its use or distribution, as it contains information about the financial status of the affected party provided by its financial institution.

[27] Therefore, I find that part 1 of the test under section 17(1) has been met and will go on to consider whether part 2 of the test is satisfied.

***Part 2: supplied in confidence***

*Supplied*

[28] The requirement that the information was “supplied” to the institution reflects the purpose in section 17(1) of protecting the informational assets of third parties.<sup>11</sup>

[29] Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.<sup>12</sup>

*In confidence*

[30] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.<sup>13</sup>

[31] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances of the case are considered, including

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<sup>9</sup> Order P-1621.

<sup>10</sup> Order PO-2010.

<sup>11</sup> Order MO-1706.

<sup>12</sup> Orders PO-2020 and PO-2043.

<sup>13</sup> Order PO-2020.



whether the information was

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure.<sup>14</sup>

### *Representations*

[32] The AGCO states that although the EOI did require an applicant's acknowledgement that information submitted may be disclosed pursuant to *FIPPA*, the sensitive nature of the required information created a reasonable, implicit expectation of confidence that any disclosure would take into account the exemptions to disclosure provided by *FIPPA*.

[33] The appellant accepts that the affected party "supplied" the information in the record to the AGCO, but denies that it was done in confidence, for the following reasons:

The AGCO concedes that all applicants had to acknowledge that the information they were submitting could be disclosed pursuant to the *Act*.

In this case, the "document substantively in the form provided by the AGCO confirming that the applicant had secured a retail space and providing certain details about the proposed space" consisted entirely, or almost entirely, of information that the AGCO made public, or that was available to the public. At the conclusion of the lottery, the AGCO publicly released the names of the winning applicants [including the affected party] and the addresses where they had applied to set up their retail cannabis stores. In the case of the affected party, as the AGCO notes, it was notorious that its chosen location was [address]. The owner/landlord at that premise was also a matter of public record from the land registry and municipal tax rolls, as was noted in media reports.

[34] In reply, the AGCO states that the names of the selected applicants from the Allocation Lotteries, including that of the affected party, and their proposed store

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<sup>14</sup> Orders PO-2043, PO-2371 and PO-2497, *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

locations were published on the AGCO website, and Lottery participants were advised before entering that this information would be published.

[35] As indicated, the affected party did not provide representations.

*Analysis/Findings re part 2*

[36] On the question of whether the information in the record was "supplied" to the AGCO, I agree with the AGCO and the appellant, and I find that the information about the affected party in the record was supplied to the AGCO by the affected party when completing the online AGCO EOI form.

[37] However, based on my review of the record and the AGCO's and the appellant's representations, I find that the information was not supplied in confidence.

[38] The affected party was a winner of the lottery to operate a cannabis retail store. According to the AGCO, the name of the affected party and the address of its proposed retail location is publicly available information, as it was posted on the AGCO's website.

[39] The record consists of three parts: an Application Summary, a Confirmation of Retail Space form, and two form letters completed by the affected party's financial institution.

[40] The AGCO did not provide representations on the application of section 17(1) to the Application Summary found at pages 1 to 10 of the record.<sup>15</sup> The Application Summary contains basic information about the applicant, along with the affected party's attestations as to its eligibility to participate in the lottery.

[41] The information at issue in the record for which the AGCO has provided section 17(1) representations is found on pages 11 to 15 of the record. This information includes the name of the affected party's contact and its proposed retail location ownership, both found on the Confirmation of Retail Space form, and the form letters completed by the affected party's financial institution.

[42] Much of this information is already in the public domain. The AGCO indicated in its representations that its selection of the affected party and the address of its proposed retail location received significant media attention. In support, the AGCO provided a link to a news article, listing the winners of the lottery, including the affected party. This article contains the name of the affected party and its contact, and the address and ownership of the affected party's proposed retail location. The affected party's contact was interviewed by the reporter and provided reporter with their name

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<sup>15</sup> Pages 1 to 5 is the Application Summary in English, and pages 6 to 10 is the same in French.

and relationship to the affected party, as well as details about the ownership of the proposed retail location.

[43] Much of the information at issue for which the AGCO has provided section 17(1) representations is also publicly available on the AGCO's website.<sup>16</sup> This publicly available information includes the blank versions of the actual forms at pages 11 to 15 of the record that were completed by ROL applicants, including the affected party. These forms are the:

- Confirmation of Retail Space
- Letter of Confirmation - Commitment to Provide Letter of Credit
- Letter of Confirmation - Cash or Cash Equivalents Capacity

[44] These forms confirm the information that an applicant is required to provide in its EOI, as set out in the AGCO's representations and on its website.

[45] The Confirmation of Retail Space form in the EOI provides the name, title and contact information of the owner of the proposed retail premises, which in this case, as evidenced by the news article provided by the AGCO, is already publicly available information.

[46] The templates of the two letters of confirmation indicate that the affected party, as an applicant:

- is in good standing with its financial institution and has the financial capacity necessary to obtain \$250,000 in cash or cash equivalents; and
- has the financial capacity necessary to obtain a Standby Letter of Credit in the amount of \$50,000 and that the Letter of Credit will be provided if the applicant is selected.

[47] All that was required to be filled out by the affected party's financial institution before the financial institution's signing officer signed the two letters of confirmation were the date, and the affected party's and the financial institution's names.

[48] The affected party, which is a business, and to whom the information relates, did not provide representations. In the absence of such representations, therefore, I do not have evidence of its position as to whether the information it provided in the EOI was:

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<sup>16</sup> See <https://www.agco.ca/cannabis/pre-qualification-documents-required-cannabis-retail-store-allocation-lottery>

- communicated to the AGCO by the affected party on the basis that the information was confidential and that it was to be kept confidential, or
- treated consistently by the affected party in a manner that indicates a concern for confidentiality.

[49] As such, I do not have sufficient evidence to find that the affected party had a reasonable expectation of confidentiality, implicit or explicit, at the time the information in the record was provided to the AGCO.

[50] I also note at the time the affected party provided the information to the AGCO, it was advised in the application that the information it provided in the record may be disclosed pursuant to the *Act*. The Application Summary Form specifically states:

*The information you have submitted is collected pursuant to the Cannabis Licence Act, 2018. The principal purpose for which this information will be used is to determine whether you may participate in the Allocation Lottery, and compliance with the Allocation Process. The information may be disclosed pursuant to the Freedom of Information and Protection of Privacy Act. For questions about the collection of this information, please contact Manager, Cannabis Eligibility at the Alcohol and Gaming Commission of Ontario...* [Emphasis in original].

[51] Although this is not a determinative factor, without representations from the affected party, I am not satisfied that the information in the record about the affected party was prepared by it when completing the online EOI form for a purpose that would not entail disclosure.

[52] Therefore, I find that part 2 of the three-part test under section 17(1) has not been met. As part 2 has not been met, there is no need for me to also consider whether part 3 of the test under section 17(1) has been met, since all three parts of the test under section 17(1) must be satisfied for the exemption to apply. I find that the record is not exempt under section 17(1).

[53] I will now determine whether section 21(1) applies to the information for which it has been claimed in the record.

**Issue B: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?**

[54] The AGCO relies on section 21(1) of the *Act* to deny access to portions of pages 1, 6 and 11 of the record. This information consists of the names, phone numbers and emails of the affected party’s contact person and the owner of the retail premises, as well as the title of the owner of the retail premises. However, the emails and phone numbers of these individuals is not at issue in this appeal. Therefore, I will consider whether section 21(1) applies to the names of these individuals and the title of the

owner of the premises.

[55] In order to determine whether section 21(1) may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. This is necessary because section 21(1) can only apply to personal information, which 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;

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

personal information.<sup>17</sup>

[57] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[58] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>18</sup>

[59] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>19</sup>

### ***Representations***

[60] The AGCO states that the information that it withheld under section 21(1) the names of the affected party's contact and that of the owner of the proposed retail premises location, as well as the owner's title. The AGCO submits:

The timelines for satisfying certain requirements in connection with the Second Allocation Lottery were very short, as few as five business days in some cases, so prompt responses to contact from the AGCO would be essential. As set out above, the EOI clearly stated that the primary purpose of the collection of information was for the Registrar to ensure eligibility under the rules of the lottery. This makes it possible that [the affected party's contact] did not contemplate the possibility for [this information] being made public, particularly given the media attention which followed the publication of the location of [the retail premises'] proposed location.

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<sup>17</sup> Order 11.

<sup>18</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>19</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

The Confirmation of Retail Space form submitted as part of [the affected party's] EOI asks the applicant to provide "the name and contact information of at least one party with a legal interest in the space who can confirm your occupancy as of October 2019." Though the owner of the property is a matter of public record... AGCO takes the position that, as a result, name and relationship to the applicant [the affected party] are personal information...

[61] The appellant submits that someone applying to partake in a lottery to get a cannabis retail license is, by that very fact, doing so in a business capacity because they are pursuing a business license. The appellant states:

The act of putting down on a business application their name, title, contact information and designation, or the same details of anyone else involved with them in the enterprise, by that very act makes it information in a business or professional capacity. Thus, those details are not protected "personal information" under section 21.

...The presumption on a business licence application should be that the contact information is not personal information, per sections 2(3) and 2(4) of the *Act*. To rebut that presumption takes hard evidence, not the AGCO's speculation about appearances.

The AGCO also suggests that one of the individuals behind the Application may not have "contemplate[d] the possibility for [the information] being made public." However, what someone contemplated, when submitting information to a government body, is not a consideration at this stage, and no such language appears in the *Act* under section 21.

The test, in fact, is set out in Order PO-2225, affirmed by the Divisional Court and the Ontario Court of Appeal:<sup>20</sup>

- (1) In what context do the names of the individuals appear?
- (2) Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

I would submit that (1) the names of any individuals appear in a strictly business/professional context, and (2) unless some of what is redacted in

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<sup>20</sup> *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673 [leave to appeal to SCC denied].

the AGCO's written representations can substantiate otherwise, the AGCO has presented no evidence that the information, if disclosed, would reveal something of a truly personal nature about any of these individuals.

[62] In reply, the AGCO states that even if some or all of the information that appears on the Confirmation of Retail Space document in the EOI might be considered information about a person in a business capacity, it was provided by the affected party, not the owner of the proposed retail premises. The latter did not willingly provide business information about themselves.

[63] In sur-reply, the appellant points out that nowhere in the *Act* does it say anything about those individuals who supply identifying information determine whether that information is, or is not, personal information.

[64] As indicated above, the affected party did not provide representations.

### ***Analysis/Findings***

[65] At issue are the names of the affected party's contact person and the owner of the proposed retail premises, as well as the title of the owner.

[66] The information at issue is related to the affected party's proposed business. This information was required by the AGCO in its online EOI form for the allocation lottery. The contact person for the affected party in their business capacity provided all of the information in the record, which is business information about the affected party, its financial status and its proposed retail premises.

[67] Section 2(3) provides that personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business capacity. The information at issue is the name and title<sup>21</sup> of individuals that identify them in a business capacity.

[68] Information that relates to individuals in a business capacity may still qualify as personal information if the information reveals something of a personal nature about them; however, in this case it does not. The information does not reveal anything of a personal nature about the affected party's contact or the owner of the proposed retail premises.

[69] In this case, the name and title of the property owner and the name of the affected party's contact person is publicly available information, having been revealed in media reports. It is clear that this information is information about these individuals in

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<sup>21</sup> Title of the property owner.



their business capacity, not personal capacity.

[70] Therefore, the information at issue for which the section 21(1) personal privacy exemption has been claimed is not personal information. As well, the remainder of the record does not contain personal information.

[71] As I have found there is no personal information in the record,<sup>22</sup> the personal privacy exemption in section 21(1) does not apply, as this exemption can only apply to personal information.

### **Conclusion**

[72] As I have found that neither of the mandatory exemptions in sections 17(1) and 21(1) apply to the record, and no discretionary exemptions have been claimed for the record, the record is not exempt. I will order the record disclosed, except for the information that is not at issue, the email addresses and the phone numbers of the affected party's contact and the owner of the proposed retail premises, which is found on pages 1, 6 and 11 of the record.

[73] As I have found the information at issue in the record not to be exempt, therefore, there is no need for me to consider the application of the public interest override in section 23.<sup>23</sup>

### **ORDER:**

I order the AGCO to disclose the record, less the email addresses and phone numbers found on pages 1, 6 and 11 of the record, to the appellant by **December 17, 2021, but not before December 10, 2021.**

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

Diane Smith  
Adjudicator

\_\_\_\_\_  
November 12, 2021

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<sup>22</sup> I have not made a finding about the email addresses and the phone numbers in the record, as this information is not at issue in this appeal.

<sup>23</sup> Section 23 reads:

An exemption from disclosure of a record under sections 13, 15, 15.1, 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.