

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4521

Appeal PA21-00442

Ministry of Public and Business Service Delivery

May 29, 2024

Summary: The Ministry of Public and Business Service Delivery (the ministry) received a request under the *Act* for access to records relating to a named company's application to become a licensed consumer reporting agency. The ministry decided to disclose the records, in part. The named company appealed the ministry's decision.

In this order, the adjudicator finds that some information that the ministry decided to disclose qualifies as personal information. As the requester does not seek access to personal information, she orders the ministry not to disclose it to the requester. She also finds that section 17(1) (third party information) does not apply. As a result, the adjudicator partially upholds the ministry's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31, sections 2(1) (definition of "personal information") and 17(1).

Orders Considered: Orders MO-1194 and PO-2632.

OVERVIEW:

[1] The Ministry of Public and Business Service Delivery (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

All communication between the Ministry of Government and Consumer Services staff, including the minister responsible, regarding [named

company's] application and approval (April 2, 2020) to become a licensed consumer reporting agency.¹

[2] Before issuing a decision, the ministry notified a named company as its interests may be affected by disclosure of the responsive records. The ministry subsequently issued a decision granting partial access to the records, relying on section 17(1) (third party information) and section 21(1) (personal privacy) to withhold the remainder of the information.

[3] The named company (now the appellant) appealed the ministry's decision to disclose the portions of records to the requester to the Information and Privacy Commissioner of Ontario (IPC).²

[4] During mediation, the appellant argued that the exemption at section 21(1) applies to the information that the ministry decided to disclose. It also argued that section 17(1) applies to a business plan.

[5] The requester advised that he continues to pursue access to the records or the portions of the records the ministry decided to disclose to him. The requester also argued that the public interest override in section 23³ may apply and it was added as an issue in the appeal.

[6] As mediation did not resolve the appeal, it was transferred to the adjudication stage of the appeal process, where I decided to conduct an inquiry under the *Act*. I invited and received representations from the appellant and the requester.⁴

[7] In this order, I uphold the ministry's decision to grant partial access to the records at issue, in part. As I find below that the business plan is not exempt under section 17(1), I did not need to consider section 23. I dismiss the appeal.

RECORDS:

[8] There are 24 records that remain at issue in this appeal.

[9] The records relate to the appellant's application to become a licensed consumer

¹ The timeframe for the request was June 7, 2018 to May 6, 2021.

² The requester also appealed the ministry's decision to the IPC and Appeal PA22-00244 was opened. The appellant later abandoned his appeal, and it was closed.

³ Section 23 states:

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.

⁴ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Code of Procedure*.

reporting agency. They include:

- an application for a consumer reporting agency registration
- correspondence
- 11 email chains
- corporate inquiry screenshots
- a business plan
- five licensing application checklists
- a registration under the *Business Names Act* (Form 2)
- a master business licence.

[10] The appellant claims that the business plan is exempt from disclosure under section 17(1). It also claims that the remaining records at issue contain personal information that should not be disclosed.

[11] Only the information that the ministry has decided to disclose is at issue. The information the ministry has decided to withhold is not at issue and I will not consider it in this order.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 17(1) for third party information apply to record 12?

DISCUSSION:

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

[12] The appellant objects to the ministry's decision to disclose portions of some of the records on the basis that disclosure of the information they contain would be an unjustified invasion of its personal privacy under section 21(1) of the *Act*.

[13] The exemption at section 21(1) can only apply to personal information. I must therefore first decide whether the responsive records contain "personal information" as

defined in the *Act* and, if so, to whom it belongs.

[14] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

Section 2(1) gives a list of examples of personal information:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, 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 except if they relate to another individual,
- (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.

[15] This 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.⁵

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁶

⁵ Order 11.

⁶ Order PO-1880, upheld on judicial review in Ontario (*Attorney General*) v *Pascoe*, [2002] O.J. No. 4300 (C.A.).

[17] Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁷ However, in some situations, even if the information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.⁸

[18] The appellant submits that the records at issue contain personal information. It submits that the following information is contained in the records and is personal information:

- the name of a contact person
- the names of the individuals who signed the application
- contact phone numbers
- the name, address and occupation of a shareholder
- the signature of the applicant
- email addresses
- a bank account and information about year ending
- information about an individual’s employment, legal and financial history.

Analysis and findings

[19] For the reasons that follow, I find that the majority of the information the appellant claims is subject to the personal privacy exemption at section 21(1) is not “personal information” as defined by section 2(1) of the *Act*. Rather I find that it is information about a business and not about an individual. As the information is not personal information, its disclosure would not be an unjustified invasion of personal privacy and the personal privacy exemption at section 21(1) cannot apply.

[20] As explained above, the information that is at issue in this appeal is the information that the ministry is prepared to disclose relating to the appellant’s application file to become a licensed consumer reporting agency.

[21] From the records, the ministry has severed a telephone number, information about Canadian residency, sex, date of birth, medical information, employment information and information about criminal background checks of certain identified individuals.

[22] Having reviewed the information that the appellant claims is personal information,

⁷ Orders P-257, P-427, P-1412 and PO-2225.

⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

I find that the majority of the information that the ministry is prepared to disclose is not personal information. I find that it is information that relates to a business and not an individual.

[23] The appellant argues that the name of a contact person, the name of the shareholder (a named company), the address and the occupation of the shareholder, the information about year ending and the name of a bank is all personal information. However, the definition of "personal information" requires that it is "recorded information about an identifiable individual." In this case, a named company is the subject of the information. As such, the information about the named company, is not about an identifiable individual. Likewise, the information about the appellant's year ending (as a named company) and the name of the bank where it conduct its banking⁹ is not about an identifiable individual.

[24] As stated above, information about an individual in their professional, official or business capacity is not considered to be "about" the individual unless it reveals something of a personal nature about the individual.¹⁰ In this case, I have reviewed the records and can confirm that any information on the application that appears in relation to a named contact person and the names of two individuals and their email addresses appears in their business or professional capacity and does not reveal anything of a personal nature about them. As such, I find that the information about the named contact person, and the names of two individuals and their email addresses are not personal information as they are not "about" an individual in their personal capacity.

[25] The appellant argues that the phone numbers that appear in the records are personal phone numbers. On my review of the records, I note that there are two phone numbers which the ministry is prepared to disclose. One of them is clearly a work phone number as it is referred to as the office number in a correspondence.¹¹ The other phone number is identified to as a mobile number. Although the appellant argues that this mobile number is a personal phone number, I do not accept its argument. In the context of the records, the mobile number is being used as the contact number for ministry staff to connect with a named individual who is acting on behalf of the appellant. In such context I do not find that the mobile number is the personal phone number of this named individual as it was being used for business purposes.

[26] The appellant also submits that signatures as they appear in the records is personal information. In Order MO-1194, former Assistant Commissioner Tom Mitchinson discussed the IPC's treatment of handwriting and signatures appearing in a number of different contexts, as follows:

⁹ The reference to the named bank provides the name of the bank alone. It does not include any details about the bank account, such as bank account number.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹¹ Record 2.

In cases where the signature is contained on records created in a professional or official government context, it is generally not “about the individual” in a personal sense, and would not normally fall within the scope of the definition. (See, for example, Order P-773, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.)

In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information).

...

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

[27] In Order PO-2632, the adjudicator applied the above-noted context-driven approach and found that the signatures of corporate officers of Ontario Power Generation (OPG) would not reveal something that is inherently personal in nature or that disclosure of the signature of the former Minister of Energy, Science and Technology (as that position was then known) would not reveal something of an inherently personal nature. The adjudicator concluded that the signatures appeared in the records created in an official government context, that is, the signing of contracts between OPG and third parties for the provision of information technology services. In the circumstances of that appeal, the adjudicator found that the signatures contained in the records did not fall within the definition of personal information in section 2(1) of the *Act* and that, accordingly, the signatures could not be exempt under the personal privacy exemption in section 21(1).

[28] I agree with the approach taken by the adjudicators in these past IPC orders and adopt it for the purpose of this appeal.

[29] Similar to the circumstances in Order PO-2632, the signatures found in the information at issue here are the signatures of two individuals, who are the directors/partners of the appellant. In this situation, the appellant submitted an application to become a consumer reporting agency. The signatures appear on application forms and other forms that are required to be completed for the appellant to become a consumer reporting agency. As such, I am satisfied that these signatures are not personal information as they do not reveal something of a personal nature about the two individuals.

[30] However, I find that information about two individuals’ employment, legal and

financial history in the application (identified by the ministry as record 1) ¹² and the application disclosure form (identified by the ministry as record 10),¹³ which the ministry was prepared to disclose, is their personal information. I accept that this is the personal information of these identifiable individuals and reveals something of a personal nature about them, specifically their employment, legal or financial history. In any event, as the requester has stated that he is not interested in personal information, as the ministry was prepared to disclose this information I will order it not to disclose this information to the requester.

[31] In summary, I have found that the majority of the information that the ministry is prepared to disclose is about a business and only a small portion of information in record 1 and record 10 is personal information. However, I will order the ministry not to disclose the personal information in these two records as the requester is not interested in personal information. As the information that remains at issue does not qualify as personal information as that term is defined in section 2(1) of the *Act*, the mandatory personal privacy exemption at section 21(1) cannot apply. As a result, I find that none of the remaining information that the ministry is prepared to disclose is exempt under section 21(1).

Issue B: Does the mandatory exemption at section 17(1) for third party information apply to the business plan?

[32] The appellant claims that the mandatory exemption at section 17(1) applies to the business plan and that it should not be disclosed.

[33] Section 17(1) states, in part:

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, if 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;

¹² Specifically, pages 4 and 5 for one named individual.

¹³ Specifically, pages 1 and 2 of record 10 for a different named individual.

[34] Section 17(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.¹⁴ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.¹⁵

[35] For section 17(1) to apply, the party resisting disclosure – in this case, the appellant must satisfy each part of the following three-part test:

- a. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
- b. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
- c. 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 10(1) will occur.

[36] All three parts of the three-part test must be met to establish the exemption. Because I find below that the affected party has not established part 3 of the three-part test, it is not necessary for me to consider parts 1 and 2 of the test.

[37] Parties resisting disclosure must establish a risk of harm from disclosure of the record that is well beyond the merely possible or speculative, but need not prove that disclosure will in fact result in such harm.¹⁶

[38] Parties should provide detailed evidence to demonstrate the harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁷ The failure of a party resisting disclosure to provide detailed evidence will not necessarily defeat the claim for exemption where harm can be inferred from the records themselves and/or the surrounding circumstances. However, parties should not assume that the harms under section 10(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.¹⁸

¹⁴ *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.*).

¹⁵ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

¹⁶ *Accenture Inc. v. Ontario (Information and Privacy Commissioner)*, 2016 ONSC 1616, *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, [2014] 1 S.C.R. 674, *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁷ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, cited above.

¹⁸ Order PO-2435.

Representations

[39] The appellant submits that the business plan outlines confidential and sensitive plans and strategies. It submits that the business plan was shared with the ministry with a reasonable expectation of privacy. The appellant also submits that if the ministry does not keep a business plan private then every business should be explicitly advised not to share anything with government agencies as their competitors will be given access to their business information.

[40] The requester submits that he does not seek trade secrets or any information that would harm the appellant.

Analysis and findings

[41] To find that any of the section 17(1) harms could reasonably be expected to result from disclosure of the business plan, I must be satisfied that there is a reasonable expectation of the specified harm. I can reach this conclusion either based on the representations made by the parties and/or on my review of the record at issue.

[42] Based on the representations of the appellant and the requester and my review of the business plan, I find that the appellant has not established that disclosure of the business plan could reasonably be expected to prejudice significantly the competitive position or significantly interfere with the contractual or other negotiations of the appellant (section 17(1)(a)), result in similar information no longer being supplied to the ministry (section 17(1)(b)), or result in undue loss or gain to the appellant or any other entity (section 17(1)(c)).

[43] The appellant's representations are brief. It argues generally that it could reasonably be expected to suffer harms if its business plan is disclosed. Specifically, the appellant argues that the business plan outlines confidential and sensitive plans and strategies. However, from my review of the business plan and, in light of the appellant's representations, I am not persuaded that it contains proprietary information or that its disclosure could reasonably be expected to result in any of the harms set out in section 17(1). I do not accept that the information contained in the business plan is confidential and/or sensitive. I note that much of the information contained in the business plan is found on the appellant's website.

[44] Moreover, I find that the appellant's representations fall short of the sort of detailed evidence that is required to establish part 3 of the test for section 17(1) to apply. Instead, its representations amount to the speculation of possible harms. As stated above, the business plan relates to the appellant's application to become a licensed consumer reporting agency. From my review of the business plan and the appellant's representations, I am unable to conclude that disclosure of the business plan could reasonably be expected to result in any of the stated harms in section 17(1).

[45] Further, I do not accept the appellant's statement that businesses would refuse to

provide their business plans to the ministry in the future when applying to become a consumer reporting agency. The ministry requires that a business plan be submitted to be able to receive the designation or to become a consumer reporting agency.

[46] In sum, in the absence of any detailed evidence from the appellant and based on my review of the business plan itself, I do not accept that the disclosure of the business plan could be reasonably expected to result in the harms set out in sections 17(1)(a), (b), or (c) of the *Act*. As a result, I find that the appellant has failed to establish that part 3 of the section 17(1) test has been met.

[47] All parts of the three-part test must be met for the mandatory exemption at section 17(1) to apply. Since the appellant has not established part 3 of the section 17(1) test, I find that section 17(1) does not apply to exempt the information at issue in this appeal from disclosure.

[48] I have found that it is not necessary for me to consider whether section 21(1) applies to the small portions of information that I have found qualify as personal information because the appellant does not seek access to personal information. I have also found that section 17(1) does not apply to the business plan, and I will uphold the ministry's decision to disclose it.

ORDER:

1. I order the ministry to withhold pages 4 to 5 of record 1 and pages 1 to 2 of record 10.
2. I uphold the ministry's decision to disclose copies of the redacted records to the requester, in accordance with its original decision, by **July 4, 2024** but not before **June 28, 2024** and dismiss the appeal.
3. To verify compliance with provision 1, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the requester upon request.

Original Signed By: _____

Lan An
Adjudicator

_____ May 29, 2024