



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

PRIVACY COMPLAINT REPORT

PRIVACY COMPLAINT NUMBER PC-030006-1

Ministry of Finance



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PRIVACY COMPLAINT NO. **PC-030006-1**

MEDIATOR: **Giselle Basanta**

INSTITUTION: **Ministry of Finance**

SUMMARY OF COMPLAINT:

The complainant filed a privacy complaint with this office stating that the Ministry of Finance (the Ministry) inappropriately disclosed her personal information in a letter from the Ministry to a third party dated February 27, 2002 contrary to the *Freedom of Information and Protection of Privacy Act* (the Act).

BACKGROUND TO THE COMPLAINT:

According to the Ministry, the complainant operated a sole proprietorship business operating as a variety store from April 1, 1999 to January 27, 2001. She obtained a Retail Sales Tax (RST) vendor permit on May 12, 1999. The complainant disputes these facts, submitting that she operated the business from July 1, 1998 and that the RST vendor permit was issued February 3, 1999. However, it should be noted that these facts do not affect the outcome of the investigation.

The RST account was set up for quarterly filing and all returns from inception to the time the business was closed were filed late and without any payment. The account entered and has remained in collections since September 15, 2000. There was progressive collection action. A Warrant of Seizure and Sale and a *Personal Property Security Act* lien were registered to secure the Ministry's position. The complainant entered into a payment arrangement with the Ministry commencing in July 2001.

The Ministry received a letter dated November 8, 2001 from legal counsel for a third party. Counsel advised the Ministry that the third party had previously sold the business to the complainant. However, as the complainant did not pay the entire sale price on closing, the balance of the sale price was secured and registered by a mortgage. Subsequently, the third party took over the business. Counsel for the third party advised that since the third party is selling the business to another purchaser, she is requesting that the Ministry supply her client with an RST tax certificate under section 22 of the *Retail Sales Tax Act* (RSTA).

In response to the November 8, 2001 letter, the Ministry sent a letter dated December 21, 2001 to the third party specifying the outstanding RST liability of the business. The Ministry, in its letter stated:

Under Section 22(5) of the [*RSTA*], you are required to obtain a Clearance Certificate prior to disbursing the proceeds of sale for the subject's assets. Under Section 22(6) of the Act, you will be held personally liable for the taxes, penalties, and interest owing under subsection 22(1), if you fail to obtain the Minister's Clearance Certificate.

Subsequently, the Ministry sent a final notice dated February 27, 2002 to the third party specifying the amount of the deemed trust claim with respect to the RST liability on the account.

In a letter dated December 23, 2002 to the Ministry, counsel for the complainant advised that the complainant is involved in litigation with the third party concerning the business. Counsel charged that the complainant's personal information was disclosed inappropriately to counsel for the third party in the Ministry's February 27, 2002 letter. Counsel advised that the complainant is seeking, by way of remedy, an apology and compensation for costs incurred with respect to dealing with the alleged breach.

In a letter dated January 7, 2003 to counsel for the complainant, the Ministry provided the amount of the unpaid balance for the complainant's RST account as of February 28, 2002 and as of January 7, 2003 and confirmed that a payment history of the complainant's account was provided to the complainant's counsel separately by Ministry staff. The Ministry also stated,

... In accordance with the requirements of sub-section 22(8) of the [*RSTA*], the ministry advised [counsel for the third party] on December 21, 2001 of the outstanding RST liability and requested payment of the balance in order to issue the requested clearance certificate. No payment was received and on February 27, 2002, a final notice for payment was sent to [counsel for the third party]. As the disclosure of this information is authorized under the [*RSTA*], in these circumstances, there was no breach of confidentiality and no compensation for costs is applicable or appropriate.

[The complainant] has now made payments totalling [XXXX] and is still liable for the outstanding balance despite any claim the ministry may have against [the third party]. ...

Section 22 of the *RSTA* provides, in part, as follows:

Trust for money collected

22(1) Any amount collected or collectable as or on account of tax under this Act by a vendor shall be deemed, despite any security interest in the amount so collected or collectable, to be held in trust for Her Majesty in right of Ontario and

separate and apart from the vendor's property and from property held by any secured creditor that but for the security interest would be the vendor's property and shall be paid over by the vendor in the manner and at the time provided under this Act and the regulations.

...

Minister's certificate

(5) Every person who, as assignee, liquidator, administrator, receiver, receiver-manager, secured or unsecured creditor or agent of the creditor, trustee or other like person, other than a trustee appointed under the *Bankruptcy and Insolvency Act* (Canada), takes control or possession of the property of any vendor shall, before distributing such property or the proceeds from the realization thereof under that person's control, obtain from the Minister a certificate that the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor, has been paid or that security acceptable to the Minister has been given.

No distribution without Minister's certificate

(6) Any person described in subsection (5) who distributes any property described in that subsection or the proceeds of the realization thereof without having obtained the certificate required by that subsection is personally liable to Her Majesty in right of Ontario for an amount equal to the amount deemed by subsection (1) to be held in trust, including any interest and penalties payable by the vendor.

Notice to be given

(7) The person described in subsection (5) shall, within 30 days from the date of that person's assumption of possession or control, give written notice thereof to the Minister.

Minister to advise of indebtedness

(8) As soon as practicable after receiving such notice, the Minister shall advise the person described in subsection (5) of the amount deemed by subsection (1) to be held in trust, including any interest and penalties thereon.

THE COMPLAINANT'S POSITION:

In her complaint to this office, the complainant alleges that the Ministry disclosed her personal financial information to the third party without her consent.

The complaint states that both she and the third party are previous owners of the business and that she owned the business until January 27, 2001. The complainant states that the Ministry was aware of the fact that the third party was in possession of the business effective January 27, 2001 and that as of June 2001 she is involved in litigation with the third party.

It is the complainant's position that the third party never exercised a security agreement against her. The complainant states that the third party sold the business in September 2001, therefore as of November 8, 2001 the third party does not meet the criteria outlined in section 22(5) of the *RSTA* and therefore section 22(8) is not applicable.

It is the complainant's position that the Ministry actions are in violation of Sections 67, 17(1)(a)(c); 17(2); 21(2), 21(3); 28, and 40(2) of the *Act*.

THE MINISTRY'S POSITION:

It is the Ministry's position that the information itself belongs to the business, as opposed to the complainant personally. In the alternative, the Ministry has stated to counsel for the complainant that in accordance with section 22(8) of the *RSTA*, the disclosure of the information in the letters was authorized and therefore there was no breach of the *Act*.

DISCUSSION:

Scope of the Investigation:

The scope of my investigation into this complaint does not include whether or not the third party adhered to the requirements of the *RSTA*. It also does not include in its scope whether or not the Ministry's calculation of the RST liability was accurate at the time this amount was disclosed to counsel for the third party or any of the issues regarding the litigation between the complainant and the third party.

It should also be noted that the complainant has raised concerns as to whether the Ministry has breached sections 17, 21 and 28 of the *Act*. These sections of the *Act* come under the "Access to Information" provisions in Part II. These provisions permit an individual to request information under the *Act* and, if not satisfied with the decision of the institution, to launch an appeal with this office within 30 days of such a decision. In this case, the complainant launched a privacy complaint under Part III of the *Act* and as such, these circumstances do not involve an appeal of an access request, and therefore I will not address the access provisions of the *Act*.

The only relevant issues that arise in this complaint are whether the information that was disclosed to the third party constitutes "personal information" as defined by the *Act*; and if so, whether the disclosure of the personal information was in accordance with section 42 of the *Act*.

Issues:

Does the information contained in the December 21, 2001 and the February 27, 2002 letters from the Ministry to counsel for the third party constitute “personal information” as defined in section 2(1) of the *Act*?

Section 2(1) of the *Act* defines “personal information” as recorded information about an identifiable individual.

There are two pieces of information contained in the letters that are relevant to this privacy complaint.

1. The complainant’s name where it appears with the name of the business and the Vendor Permit Number/Retail Sales Tax account number.
2. The amount of the RST liability as provided by the Ministry in regard to the business.

ANALYSIS:

MC-020052-1 was a privacy complaint report initiated by this office arising from a newspaper article. The article made reference to a list that was attached to a City of Kingston council agenda consisting of 19 pages of unpaid Business Occupancy Taxes (BOT), some dating back to the mid-1990s. The agenda was circulated to councilors and the media, posted on the city’s Web site, and made available in hard copy to members of the public. In addition, the article stated that a councilor posted the list on his personal Web site. In her report relating to this privacy complaint, Mediator Mona Wong makes the following comments:

Section 2(1) of the *Act* states in part that "personal information" means recorded information about an identifiable **individual** (emphasis added). Previous decisions of this office indicate that information about a business, as opposed to an individual, will not generally be considered to be "personal information". Senior Adjudicator David Goodis summarized this line of decisions in Order MO-1392:

"Personal information" means recorded information about an "identifiable individual". The Commissioner has interpreted this term to mean a natural person; it does not apply to information about other entities such as corporations, partnerships, sole proprietorships or business organizations (Order 16). The Commissioner has also recognized that some information relating to a business entity may, in certain circumstances, be so closely related to the personal affairs of an identifiable individual as to constitute that individual's personal information (Orders 113, P-364, M-138). Nonetheless, in order to qualify as "personal

information", the fundamental requirement is that the information must be "about an identifiable individual" and not simply associated with an individual by name or other identifier. It is apparent, therefore, that while the meaning of "personal information" may be broad, it is not without limits.

The issue of whether the list contains personal information in the circumstances of this complaint arises from the fact that sometimes the names of "natural persons" (i.e. individuals) can form part of a business name, and that the names of individuals, without further words to describe or identify the business, appear on the list. The City takes the position that where an individual's name appears on the list as the name of the business, they are engaged in commercial activities as distinct from activities undertaken in a personal, non-commercial capacity.

In her conclusion, Mediator Mona Wong found that information that clearly relates exclusively to corporations, partnerships, sole proprietorships and business organizations and not to identifiable individuals is not personal information.

I have carefully examined the information contained in both the Ministry's December 21, 2001 and the February 27, 2002 letters to counsel for the mortgage holder. It is my view that the letters do not contain any personal information relating to the complainant. The complainant's name appears in the letters in addition to the name of the business where it is clear that the complainant engaged in commercial activities, as distinct from activities undertaken in a personal, non-commercial capacity.

The letters do contain information that relates to a sole proprietorship business such as the name of the complainant "operating as" the name of the business and the RST Vendor Permit Number assigned to that business for the purpose of collecting retail sales taxes and the amount of the RST liability accrued to the business. It is my view that this information, in itself, does not engage the complainant in a personal, non-commercial capacity.

With respect to the above, I find that the information in question is not about an identifiable individual, in this case the complainant, but rather is about the business. It therefore does not qualify as "personal information" as defined by section 2(1) of the *Act*.

Was the disclosure of the "personal information" in accordance with section 42 of the Act?

In light of my conclusion that the information contained in the letters to the third party does not constitute the personal information of the complainant, it is not necessary for me to consider section 42 of the *Act*.

CONCLUSION:

I conclude that the information in the Ministry's December 21, 2001 and February 27, 2002 letters to counsel for the third party does not constitute the personal information of the complainant.

Giselle Basanta
Mediator

December 23, 2003