

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3142

Appeals PA11-337-2, PA11-338-2, PA11-339-2, PA11-340-2, PA11-341-2
and PA11-342-2

Ministry of Government Services

November 29, 2012

Summary: The requester sought access to information contained in the ONBIS directory relating to six identified individuals. Access was denied on the basis that the release of such information would be an unjustified invasion of personal privacy under section 21(1). In this order, the information contained in the responsive records is found not to qualify as "personal information" under the definition in section 2(1) and, therefore, it is not exempt under section 21(1). Accordingly, all of the information is ordered disclosed to the appellant.

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

Orders and Investigation Reports Considered: P-1636

OVERVIEW:

[1] The Ministry of Government Services (the ministry) received five requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

. . . the names of all Ontario corporations where [a named individual] is currently or was listed as Director, officer, President or Vice President under the Ontario Corporations Act (1992-present). Please provide copies of all C.I.A. [Corporations Information Act] filings of such occurrences.

[2] In addition, a sixth request was filed for access to:

. . . the entity names & BIN [Business Information Number] #'s of Sole Proprietorships or General Partnerships where an individual named [a specified individual] is currently listed or was listed as the sole proprietor or general partner under the Ontario Business Names Act from 1993-present."

[3] Following the conclusion of a time extension appeal, the ministry located the responsive records and, pursuant to section 28 of the *Act*, notified the six people named in the requests and the records (the affected persons). After receiving the submissions of the affected persons, the ministry denied access to the responsive information, claiming the application of the mandatory invasion of privacy exemption at section 21(1) of the *Act*.

[4] The appellant appealed the ministry's decision to this office. Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[5] Initially, I sought representations from the ministry and the affected persons, and received representations from the ministry and three of the affected persons. I then sought the representations of the appellant and shared with him the complete representations of the ministry, but not those of the affected persons, because of confidentiality concerns.

[6] The appellant also provided me with representations and indicated that he was no longer seeking access to the filings made by the affected persons pursuant to the *Corporations Information Act*. I concluded my inquiry by seeking and receiving representations from the ministry by way of reply.

[7] In this order, I do not uphold the ministry's decision to deny access to the requested information and order it to disclose the records to the appellant, in their entirety.

RECORDS:

[8] The records at issue are six documents entitled MCCR – Companies Branch – Name Search Extract Report. The records in each of the appeals consist of computer printouts ranging from two to forty-eight pages in length. For five of the six appeals (PA11-337-2 to PA11-341-2), the responsive records contain information consisting of the five individuals' first and last name, along with all of the corporations which are registered with the ministry's Companies Branch where these individuals are registered

as an officer or director of a corporation. In addition, in Appeal PA11-342-2, the appellant seeks access to information relating to one of the identified individuals in his capacity as a sole proprietor or partner of any unincorporated entities. In each case, the records describe the type of business entity (corporation or business), a number allocated for each registration, the corporation or business name, the address provided for each of the individuals, their status with the corporation (officer or director) or business (sole proprietor or partner) and the start and end date (where applicable) of their involvement in the corporation or business.

ISSUES:

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

Issue B: Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

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

[9] In order to determine whether the mandatory personal privacy exemption in section 21(1) of the *Act* applies, it is necessary to decide whether the records contain “personal information” and, if so, to whom it relates. That term 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;

[10] 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 [Order 11].

[11] 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.

[12] 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.¹

[13] 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.²

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

Representations of the parties

[15] The ministry has provided some background information to assist in better understanding the information that is the subject of this request, as well as how and where it is stored. The information sought is maintained by the ministry in its Ontario Business Information System (ONBIS) database, “an electronic registry of company information for all business entities in Ontario.” Information stored in the database is collected under the authority of the *Corporations Information Act*, the *Business Corporations Act*, the *Business Names Act*, the *Limited Partnerships Act* and the *Extra-Provincial Corporations Act*.

[16] The ministry goes on to indicate that ONBIS “facilitates corporate and business names searches, including the names and address for service of officers, directors and principals of Ontario businesses.” It then adds that “[T]he search functions of ONBIS, however, have been designed to only permit searches to be conducted using a business/corporate name or business/corporate number. Notably, a member of the public cannot search ONBIS using the name of an individual.” In addition, the ministry submits that “ONBIS does not exist to permit members of the public to build profiles of specific individuals by ascertaining their current and historic business affiliations.” In the present appeal, the ministry takes the position that the reports prepared as a result of this request “would provide a history of each individual’s employment as an officer, director or principal of a business or businesses.”

[17] The ministry argues that the information sought by the appellant constitutes the personal information of the affected persons under paragraph (b) of the definition of that term in section 2(1). It submits that the information represents “employment history” and is comprised of “a comprehensive history of the individual’s employment as

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

an officer, director or business principal that is akin to the type of chronological work history one would provide on a resume.”

[18] The ministry then goes on to submit that the section 2(3) exception to the definition of personal information applies to “business identity information” but does not extend so far as to include “a historical record of an individual’s employment as an officer, director of [sic] principal of a business.” The ministry urges me to apply the rules of statutory interpretation, “reading the words of the *Act* in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of Parliament.” It goes on to suggest I must read the statute in a coherent way, without internal inconsistencies, bearing in mind the purposes of the *Act*. In doing so, the ministry argues that I ought to consider what it describes as the principal purpose of the *Act*, privacy protection, and find that “the Legislature did not intend for the definition of business information to apply to a record compiling and listing an individual’s history of employment as an officer, director, principal or owner of a business.”

[19] The ministry advances another ground in support of its position that the information at issue constitutes the personal information of the affected persons, arguing that its disclosure would reveal something of a personal nature about the affected persons. In this case, disclosure would reveal “the length of time that the named individuals have been associated with a business, their progression through various positions within the business, the field of business in which they have been involved, the number of businesses the individual has been active in and that individual’s associations with other businesses and other individuals”, according to the ministry. The disclosure of this information would enable one to make inferences about the individual and to “create a profile of the individual with information akin to information found on a resume”, which has consistently been held to qualify as employment history and, therefore, personal information by this office, according to the ministry.

[20] None of the affected persons who provided representations addressed this aspect of the appeal.

[21] The appellant submits that the exception in section 2(3) provides a complete response to the submissions of the ministry, as the only information sought in the request relates to the individuals identified therein in their official or business capacities.

Findings respecting the definition of personal information

[22] To begin, I note that the purposes of the *Act* as set out in section 1 include both the protection of individual’s personal information, as well as the provision of a right of access to information under the control of an institution. These are equally important

principles which are not necessarily mutually exclusive. The *Act* is designed to provide requesters with a right of access to information, while at the same time protecting the privacy of individuals by not disclosing personal information that, if disclosed would result in an unjustified invasion of personal privacy.

[23] The following three issues must be considered to determine whether the information at issue qualifies as “personal information” as defined by section 2(1) of the *Act*:

1. Does the information fit within one of the categories of “personal information” found in section 2(1)?
2. Does the information otherwise qualify as “personal information”?
3. Does the information fit within the exception to the definition of personal set out in sections 2(3) and (4)?

Does the information fit within one of the categories of “personal information” found in section 2(1)?

[24] The ministry asserts that disclosure of the responsive information would reveal “the associations and relationships that specific individuals have had for nearly nineteen years to corporations and other business entities registered and operating in Ontario.” The ministry goes on to argue that “[T]he requests, in essence, are for information about particular individuals and their *history of employment* as officers, directors, owners or principals of corporations or other business entities.” It urges me to find that this information qualifies as personal information because it “would facilitate the compilation of a profile of a particular individual’s historic associations with businesses operating in Ontario.” According to the ministry, the information qualifies as “personal information” under paragraph (b) of the definition in section 2(1) as it represents the “employment history” of these individuals.

[25] The modern rule of statutory interpretation requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.”⁴ The term “employment history” appears in both the definition of “personal information” in section 2(1) and again as one of the types of personal information whose disclosure is presumed to constitute an unjustified invasion of personal privacy in section 21(3)(d).

⁴ *Bell ExpressVu Limited Partnership v. Rex.*, [2002] 2 S.C.R. 559, at para.26, citing Elmer A. Drieger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87

[26] Previous orders of this office have interpreted the phrase “employment history” in the context of appeals where an individual’s resume is under consideration. These decisions have determined that in order for the information contained in a resume to qualify as “employment history”, and therefore be characterized as “personal information” as defined in section 2(1), the record must include more than just the individual’s name and job title. In Order MO-2176, Adjudicator Diane Smith made the following finding with respect to a request for certain information contained in a tender which referred to the qualifications of the tenderer’s employees:

The affected party submits that the records contain “personal information”, namely, the educational history (e.g. degree or diploma acronyms) and the employment history (e.g. other employers worked for, duties held on various projects, including the current one) of certain individuals, pursuant to paragraph (b) of the definition.

I have reviewed the records which the affected party argues contain the personal information of its employees and one of its officers. I find that the names of these individuals and their job titles do not qualify as their “personal information” within the meaning of the definition of that term in section 2(1). This information simply identifies these individuals in their professional or business capacity.

Similarly, I find that the affected party’s clients’ point of contact person, names and job titles, also does not qualify as “personal information” for the purposes of section 2(1). Adopting the principles referred to in the orders above, the information associated with an individual in a professional or business capacity is not considered to be “about” the individual in a personal capacity, and is not, therefore, their personal information for the purposes of the *Act*. Accordingly, I find that the names and job titles of these individuals do not constitute their personal information as that term is defined by section 2(1) of the *Act*.

However, the records also contain information relating to the employment or educational history of certain identifiable individuals within the meaning of the definition of that term. I find that this information constitutes their personal information as defined in paragraph (b) of the definition of “personal information”. In addition, I find that the names of individuals and details about their work on previous projects for the affected party represent the employment history of these individuals for the purpose of paragraph (b) of the definition in section 2(1).

Finally, as identified above, Record 9 contains the resumes of a number of individuals who are employees of the affected party. I find the resumes

contain the personal information of the individuals. They contain each individual's name along with information relating to their education or employment history, as contemplated by paragraph (b) of the "personal information" definition of section 2(1). Previous orders issued by this office have found that resumes typically include personal information as that term is defined in section 2(1) [see for example Orders P-727, P-766, MO-1444 and MO-2151].

[27] The affected persons in Appeals PA11-337-2 to PA11-341-2 are listed as directors or officers of the corporations, and sole proprietor or partner in the case of the affected party in Appeal PA11-342-2. I have not been provided with any evidence indicating the nature of their involvement in these businesses beyond the initial incorporation and registration. In my view, the phrase "information relating to . . . employment history" in the definition of personal information does not include bare information about whether and when a person was associated with a particular company as an officer, director, owner or partner. I make this finding for several reasons, bearing in mind the principles that govern statutory interpretation when applying the modern rule:

- The information at issue is not particularly sensitive, it is contained in a publicly-available database. Given that personal information which can be characterized as "employment history" is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(d), one can assume that "employment history" was intended to include sensitive information, not information that is available to the public in a database;
- The information in the records does not reveal job titles, an individual's progression through a business or his/her day-to-day powers, duties, responsibilities or functions within the business;
- A finding that personal information includes information that refers to when and whether an individual was associated with a company as an officer, director, owner or partner would contradict the meaning and intention of section 2(3), which excludes from the definition information that pertains to an individual in his or her professional, official or business capacity;
- The records do not indicate the nature of the affected persons' involvement in these business entities, or whether they were employed or otherwise engaged in them in any way beyond their involvement as officer or director.

[28] As a result, I cannot find that the information relating to the individuals qualifies as their employment history. It has not been established that these individuals were “employed” by the corporation or business or involved in any way beyond lending their names to the initial registration. As a result, I am unable to find that the records contain information which qualifies as personal information on the basis that it would reveal information relating to their employment history under paragraph (b) of the definition of that term in section 2(1).

[29] The ministry also suggests that the information at issue would “permit the public to draw inferences about the individual’s financial history and status.” It is not clear to me whether the ministry is also advancing an argument that the records qualify as “information relating to financial transactions in which the individual has been involved” from paragraph (b) of the definition of “personal information”. To the extent that the ministry advances such an argument, it has not provided sufficient evidence or explanation of how disclosure of the information at issue in this appeal would reveal an individual’s financial history or status.

[30] In summary, I find that the information at issue does not fall within the ambit of paragraph (b) of the definition of “personal information” as it is neither (i) “information relating to . . . employment history”; nor is it (ii) “information relating to financial transactions in which the individual has been involved.” I further find that the information does not fall within any of the other categories of personal information listed in paragraphs (a) or (c)-(f) of the definition in section 2(1).

Does the information otherwise qualify as personal information?

[31] The definition of “personal information” includes a non-exhaustive list of categories of information that qualifies as personal information. Even if information does not fit within one of these categories, as I have found above, it can still qualify as personal information if it is “about an identifiable individual”, as described in the preamble to the definition.

[32] The ministry argues that because the records describe the dates when an individual began and, in some cases, ended his or her association with a named company, such information qualifies as their personal information. It argues that disclosure of this information would reveal that at various times, each of the identified individuals was involved with the corporations and businesses as officers and directors or proprietors or partners respectively, and this would reveal something of a personal nature about them.

[33] In Order PO-2225, former Assistant Commissioner Tom Mitchinson set out the following two-step analysis for determining whether information should be characterized as “personal” or “professional”:

1. In what context do the names of the individuals appear? Is it in 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?
2. 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?

(i) In what context do the names of the individuals appear?

[34] Clearly, the names appear in the corporate registration database from which they were located in the individuals' business capacity. Their names are listed on the database as part of a corporate profile search and only appear there because the individuals are required to register themselves as an officer or director of a company or the owner or partner of a sole proprietorship or partnership.

(ii) Does the information reveal something that is inherently personal about the individuals?

[35] In Orders MO-2342 and MO-2343, following the reasoning in Order PO-2225, the IPC held that the information in the records, relating to the operation of a taxi business and a dairy farm respectively, did not constitute personal information because it arose in the context of the operation of a business. Further, it was held in Order MO-2342, that there was "nothing present here that would allow the information at issue to 'cross over' into the 'personal information' realm.

[36] In my view, similar principles apply in the present appeals. I find that there is nothing in the representations of the affected persons or the ministry that leads me to conclude that disclosing the information set out in the records would reveal something of a personal nature about the affected persons. Taken as a whole, the records only identify an individual and the business entity's name, contact information or designation. An examination of the records leads to a conclusion that their disclosure would not reveal anything of a personal nature about that person, such as details about the reasons for their involvement in the business, their remuneration or level of control, if any exists.

[37] The ministry likens the information in the records to that which might be found in a resume, describing and building a profile of the individual's involvement in various corporations. In certain circumstances, information contained in a resume which pertains to the start and end dates of an individual's employment may be characterized as the personal information of the individual on the basis that it falls within the ambit of "employment history". However, I note that in those cases, which are addressed in

Orders P-727, P-766, MO-1444, MO-2151 and MO-2176, information about start and end dates was accompanied by other information that described in greater detail the nature of the individuals' employment with the company, and also placed it in the context of the individuals' broader employment activities. No such information is included in the records at issue in this appeal, however.

[38] In the present case, I also must conclude that the disclosure of information about the start and end dates for the affected persons' involvement as officers or directors on the list of corporations would not reveal anything of a personal nature of these individuals. Again, the information about the start and end dates of the affected persons' involvement in the companies does not describe anything of a personal nature pertaining to their involvement in the company or their other activities with the company; nor would it disclose information about their broader employment or work history. Accordingly, I conclude that disclosure of the information at issue would not reveal anything that would qualify as "personal" in nature about these individuals. Rather, I find that this information is connected to these individuals in their business capacity only.

Does the information fit within the exception to personal information set out in section 2(3)?

[39] As set out above, I have found that the information at issue does not fit within the preamble of the definition of "personal information" at section 2(1) or within the listed categories of "personal information."

[40] For the sake of completeness, however, I will consider whether the information fits within the explicit exclusion to the definition of "personal information" that is set out in section 2(3).

[41] Section 2(3) excludes from the definition of "personal information" the "name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity." The records include the names of the affected persons and additional information about the name of the corporation, their title (officer or director) and the address of the corporation. In my view, this information is the type of information which is excluded from the definition of "personal information" by section 2(3). The information is about the affected persons in their business capacity, as participants in a business entity.

[42] In its submission, the ministry concedes that the information "may appear to fit within the 'business identity information' exclusion", but argues that "the way in which the requests have been framed render the resulting records beyond the scope of the [section 2(3)] exclusion." In doing so, the ministry asserts that the disclosure of the information in the records would reveal information about an individual's business

associations over the past nineteen years, this information goes beyond the type of "business information" contemplated by section 2(3). In essence, the ministry argues that a "profile" about the affected persons could be created revealing information about their associations with these business entities. The ministry also suggests that the records contain information about "their progression through various positions within the business, the field of business in which they have been involved . . . and that individual's associations with other businesses and individuals" or would allow for inferences to be drawn about the affected persons' "career progression, their field of work, their qualifications and competencies as well as their financial status."

[43] I disagree with the arguments put forward by the ministry on this point. The records at issue do not contain such information and the disclosure of the contents of the records would not reveal information of this sort. While the records at issue reveal the basic information of whether the affected persons were an officer or director of certain companies for a specified period of time, it does not reveal their progression through various positions within the business or the field of business in which the individual was involved, their qualifications or competencies or their financial remuneration. Where the individual is described in the records as an officer of a company, the records do not disclose their job title, their responsibilities in that role or how those responsibilities or job title may have changed over time.

[44] In my view, the language of section 2(3) is not limited or vague in its scope; rather, it unequivocally creates an exception to the definition of personal information in section 2(1) for "the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity." The wording of the section does not limit its application to a single request for information about a single company, as suggested by the ministry. Nor is section 2(3) limited to currently held business positions.

[45] The only information that can be said to not fit explicitly within the section 2(3) exclusion is the start and, in some cases, end dates of individuals' involvement in these businesses. With respect to that information, it is important to remember that section 2(3) is not a complete code for what is non-personal business information. Moreover, information does not automatically qualify as "personal information" simply because it does not fit within the section 2(3) exclusion. I find that in the present context, and consistent with my conclusions above, the inclusion of these dates does not convert what is otherwise non-personal business information into personal information.

B: Does the mandatory exemption at section 21(1) apply to the information at issue?

[46] Because I have found that the records do not contain "personal information" as that term is defined in section 2(1) of the *Act*, it cannot qualify for exemption under

section 21(1), which only applies to personal information. As no other exemptions have been claimed for the records, and no mandatory exemptions apply to it, I order that this information be disclosed to the appellant.

ORDER:

1. I order the ministry to disclose the records at issue in Appeals PA11-337-2, PA11-338-2, PA11-339-2, PA11-340-2, PA11-341-2 and PA11-342-2 to the appellant by providing him with a copy by **January 7, 2013** but not before **December 31, 2012**.
2. In order to verify compliance with Order Provision 1, I reserve the right to require the ministry to provide me with a copy of the records which are disclosed to the appellant.

Original Signed by: _____
Donald Hale
Adjudicator

_____ November 29, 2012