ORDER PO-2151

Appeal PA-020019-1

Ministry of Transportation

BACKGROUND:

The Ministry of Transportation (the Ministry) collects personal information about Ontario drivers and owners of vehicles. It maintains this information in specified databases. At one time, the Ministry made the names and addresses of drivers and vehicle owners available to the public. In 1994, however, the Ministry introduced certain privacy enhancements into its database administration. In particular, the Ministry began to suppress home address information when responding to vehicle and driver information requests.

The Ministry produces a pamphlet entitled "Centreline" that is sent to all drivers and vehicle owners with their registration notices. This pamphlet contains a number of notices regarding licensing services, including a "Public Notice" which reads:

> Personal information is collected by the Ministry of Transportation under the authority of section 205 of the Highway Traffic Act. Only 'Authorized Requesters", who have entered into a contractual agreement with MTO, may obtain residential address information for uses such as law enforcement, service of legal documents, automobile insurance purposes, financial institution information verification, debt collection, road toll collection.

The Notice invites readers to visit the Ministry's website for more information. The website provides some additional information regarding its collection of personal information and "authorized requesters" and the office to which questions regarding the collection of personal information may be directed.

NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for:

> [A] list of all "Authorized Requesters" identified in the attached MTO pamphlet [Centreline] or other persons who have obtained my residential address information or other personal information… The list should include the names and addresses of the Authorized Requesters and any other information that is in the possession or control of the Ministry with respect to that Authorized Requester and the reason for their access to my personal information.

The Ministry responded to the appellant, initially, by issuing a fee estimate in the amount of $3,120, and an interim decision in which the Ministry indicated that, on a preliminary review of the records, it appeared that full access was likely to be granted upon payment of the fee.

With respect to the fee estimate, the Ministry noted that it "only keeps comprehensive records for these transactions for one year". According to the Ministry, the basis for the estimated fee was:

> The computer database will have to be searched week by week for the past 52 weeks. It will take one hour of computer time to do the search each week. The Regulations provide for the charge of $60 for an hour of computer search time.

On appealing the Ministry's fee estimate, the appellant indicated that he is seeking to reduce the fee estimate "such that it is not onerous to find out to whom my personal information was sold". The appellant believes that the Ministry should be held accountable for and be able to readily identify to whom it is selling personal information.

During mediation, the Ministry altered its position with respect to access to records responsive to the appellant's request. The Ministry issued a revised decision stating:

> The Ministry is of the view that Regulation 460 section 2 applies. This provision states "a record capable of being produced from machine readable records is not included in the definition of a "record" for the purposes of the *Act* if the process of producing it would unreasonably interfere with the operations of an institution". The Ministry relies on this provision and is of the view that the information you have requested does not fall within the definition of "record" and, as such, is not governed by or accessible under the *Act*.

In this decision, the Ministry also noted that although the appellant paid the $10 appeal application fee for a "personal information appeal", it takes the position that the request is for "general records".

The appellant objected to the Ministry's altered position.

Mediation could not be effected and this appeal was moved into adjudication. I decided to seek representations from the Ministry, initially, and sent it a Notice of Inquiry setting out the facts and issues at adjudication.

The Ministry was first asked to provide representations on the application of section 2 of Regulation 460 made pursuant to the *Act*. If I find that the information requested is not considered to be contained in a "record" under the *Act*, this will end the matter. However, in the event that I were to find that the information does, in fact, fall within the definition of "record" and is thus governed by the *Act*, I decided to seek representations from the Ministry on the issue of fees in order to avoid any unnecessary delay in the resolution of this matter.

Along with its representations, the Ministry was asked to enclose a copy of the pamphlet that the appellant attached to his letter of request, which to that point had not been identified.

The Ministry submitted representations in response. The Ministry's representations consist of the representations, an affidavit sworn by the Section Head for the Systems Assurance and Integration group in the Road User Safety Applications Solutions branch of the Transportation Information and Information Technology Cluster of the Ministry (the section head) and a copy of the pamphlet that the appellant attached to the request.

I subsequently sought representations from the appellant and sent him the Ministry's representations in their entirety along with a copy of the Notice of inquiry. In addition to the Ministry's representations, I attached a copy of the IPC *Practices*, Number 25, dated September 1998, entitled "You and Your Personal Information at the Ministry of Transportation".

The appellant submitted representations in response. In them, the appellant submits that the Ministry had failed to provide detailed submissions and evidence to substantiate its position with respect to the application of section 2 of Regulation 460. Relying on a previous order of this office, Order P-1572, the appellant argues that the amount of time and effort required to respond to his request falls short of that in cases where this provision has been upheld.

I sent a letter to the Ministry in which I summarized and cited portions of the appellant's representations. I asked the Ministry to provide more detailed representations on both the time estimates it discussed in its representations and the anticipated interference with its operations. I also asked the Ministry to respond to the points raised in the portions of the appellant's representations that I cited.

The Ministry submitted representations in reply. In them, the Ministry provided the additional detail requested. As well, the Ministry compared the facts in Order P-1572 with the facts in the current appeal in support of the "reasonableness" of its position.

DISCUSSION:

DEFINITION OF "A RECORD"

Is there a record (as defined by the *Act*) that would respond to the appellant's request?

The term "record" is defined in section 2(1) of the *Act* as follows:

> "record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,
>
> (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
>
> (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

As noted above, section 2 of O. Reg. 460 provides:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

The Ministry's representations

In its representations, the Ministry explains the types of databases it maintains and the manner in which they are used and accessed by Ministry staff and others:

> The Ministry maintains two separate databases that contain information, including personal information about drivers, the driver license database and the vehicle registration database. The driver license database (d/l database) is a registry of all persons licensed to operate motor vehicles in Ontario. The vehicle registration database (v/r database) is a registry of registered vehicle owners in Ontario.
>
> The d/l and v/r databases are used for numerous purposes. They are used by the Ministry for monitoring and controlling driver licensing and for registering vehicle ownership. In performing Ministry transactions, for example a driver license or vehicle validation renewal, access to the Ministry record of the individual to whom the record relates is required. Driver and vehicle identification as derived from the Ministry databases is also important for enforcement purposes. As such, access to these databases is available for enforcement officials in addition to Ministry uses. For example, Ontario police forces may access these databases in the course of their duties, such as ensuring proper vehicle validation is in place and that a person has a valid driver license. Additionally, access by other Ministries is also available. For example, the Ministry of the Attorney General may access these databases to record motor vehicle related convictions. Further, access may also be required to administer driver license suspensions/reinstatements under the Family Responsibility and Support Arrears Enforcement Act, 1996.
>
> Public access is also available to specified information in these Ministry databases where certain information is provided by the requester such as driver license number and/or either complete name and date of birth or name and address for the d/l database, or vehicle identification number or license plate number for the v/r database. It is important to note that address information is not provided to the general public. However, authorized requesters approved by the Ministry and who have entered into a legal agreement with the Ministry may obtain address information for certain specified purposes. These purposes are set out in a Public Notice posted in all Issuing Offices, are posted on the MTO website and included in CentreLine, and MTO newsletter inserted in MTO mailouts … [the pamphlet referred to above]
>
> Based on the foregoing it is clear that access to the two Ministry databases occurs for multiple reasons by various entities on a continuous basis. A comprehensive

> computer system log records technical data in relation to the operation of the databases. This log contains data for every online transaction going into and coming out of the mainframe computer system … In addition to this log, there are other mechanisms in place, which also capture transactions involving the Ministry databases. However, these mechanisms may differ depending on the type of transaction involved. For example, unique user identification is assigned to each MTO employee. Authorized Requesters are also provided unique identifiers. Telephone transactions are captured through a combination of paper based logs and user identifications of the MTO employees. Transactions from the Electronic Data Transfer (EDT) system are also recorded in a separate computer log.
>
> Given the multiple methods used to capture transactions, it is important to note that the systems log would be the starting point in a search for all accesses to a particular record. Although the log can be searched with a computer program, the data that is extracted is in computer code. These codes do not immediately identify any particular persons or entities. Instead, the systems codes must be **manually** decoded, sorted, matched with related transactions and interpreted through a complex series of interrelated **manual** and electronic steps, by an experienced employee very knowledgeable of the different transactions types that are possible. [Ministry emphasis]

The Ministry points out elsewhere in its submissions that there are over 400 system log tapes for a one-year period of time.

In support of the above submissions, the Ministry provided, as I noted above, an affidavit sworn by the section head. In it, he explains the nature of the search that would be required in order to provide the appellant with the information he is seeking. The Ministry expands on this information in its reply representations. Combining the information from these two sources, I have set out the essential steps required to respond to the appellant's request.

Step One – Job set-up

- The Ministry does not have a system that, for each individual, records any access to that person's records. The Ministry does, however, have a system log, which records technical data related to the operation of the database system on the mainframe. The log contains a record for every online message that went into the mainframe (e.g. a request for information), and a record for every message that went out (e.g. a response to an information request).

- This log can be searched with a basic utility program that can extract records matching one or more character strings (e.g. vehicle plate number, driver license number). This provides an indirect means of identifying accesses to a particular record. This log is produced daily and is retained for one year in tape form.

- Conducting a search of these logs is a laborious, non-standard operation.

    - First, an experienced senior analyst must create the computer processes, or jobs, that will search these tapes. To do this, the analyst identifies the search keys, that is, the various identifiers that can be linked to an individual.

    - Then, he or she will obtain a list of the names of the daily log files from the system. The Ministry indicates that this list is divided into 20 groups and a job control statement must be written for each group. These job control statements are used to run the job on the mainframe.

The Ministry estimates that it will take two days to complete the first step.

Step Two – Job execution

The 20 jobs are then submitted into the mainframe, one at a time, for processing by the utility program. The Ministry indicates that the mainframe service provider, iServ, employs operations staff who are responsible for retrieving and feeding the log tapes into the tape drivers to be read. However, the senior analyst is responsible for all other activities related to submitting and monitoring each job.

The Ministry notes that while each job uses approximately one hour of CPU time, the actual elapsed time to complete each task requires several hours.

The Ministry estimates that performing this task would require approximately 10 days of work for the senior analyst over four weeks of elapsed time.

Step Three – Analysis of Search Results

The Ministry notes that the various programs contained in the mainframe computer produce an estimated 2,200 unique message formats, which are all written in computer code. Therefore, in order to interpret the results, a new program must be written. The Ministry indicates that the new program is required to translate the data into a readable format and to remove data that does not pertain to the appellant.

The Ministry states that interpreting the results requires the talents of a highly skilled technical expert with a wide variety of specialized knowledge about various aspects of the Ministry's computer applications. Only a very small number of people have the necessary skills and experience to perform these searches.

The Ministry estimates that one hour of programming time is required to interpret each of the 2,200 message formats, for a total of 315 days. In addition, the Ministry expects that a further 60 days will be required to test the program. In total, the Ministry estimates that this step will take 375 days to complete.

The Ministry notes further that in some cases, requests come in by telephone or facsimile and the job is performed by Ministry staff. In these cases, the authorized requester cannot be identified via the computer program because the code will identify the Ministry staff person who performed the search.

Therefore, it will also be necessary to conduct a manual search of paper, microfilmed or other logs on which information is stored. The Ministry states that it is unable at this point to estimate how much time will be required to perform this search because it is not known how many requests for information will be found.

The Ministry points out that the people with the specialized technical skills required to analyze the data are also the ones responsible for the operational health of the Ministry's most important computer systems. According to the Ministry, there are currently only two specialists on staff with the ability to perform the largest and most complex part of the requested search. The Ministry indicates that they play a vital role in supporting the day-to-day operations of the Ministry's critical systems, and that they are presently unable to keep pace with the increasing demands for their time and expertise. The Ministry claims that if they are pulled away from their essential duties for days at a time to perform one of these searches, they will fall even further behind.

Additionally, the Ministry asserts that taking the time to create this information will interfere with staff's ability to perform the regular monitoring of various systems that is necessary to keep them functioning properly. A lack of monitoring could result, for example, in a delay in detecting, diagnosing or resolving a problem suddenly arising in the mainframe systems, potentially affecting the ability of hundreds of users to do their work.

The Ministry submits that by preventing these specialists from performing their normal duties in safeguarding the performance and availability of critical computer systems, undertaking a search of this kind will unreasonably interfere with the Ministry's operations.

The Ministry takes the position that money, by way of fees paid by the appellant, would not be of assistance in this matter, as the issue is the availability of experienced people with very specialized skills. Therefore, the hiring of contract staff would be of little utility, as it is unlikely that such persons would have the expertise necessary to perform the required tasks.

Finally, the Ministry contends that allowing more time to complete the requested search would also not be of assistance. As mentioned above, The Ministry notes that priority items are currently being delayed due to the workload of these specialists. The Ministry sees no improvement in this situation for the next 12 months.

The appellant's representations

The appellant takes issue with the Ministry's position for a number of reasons. Initially, as I noted above, he submits that the Ministry has failed to provide detailed submissions and evidence to substantiate its position. The appellant's criticism of the Ministry's representations was addressed in the Ministry's reply representations as discussed above. In my view, the

Ministry's representations, taken together, provide sufficient detail to enable me to analyze this issue and arrive at a conclusion.

In addition to his overall position, and based on the findings in previous orders of this office regarding the application of section 2 of Regulation 460, the appellant is of the view that the amount of time and effort required to respond to his request falls far short of that in cases where the institution's claim has been upheld.

The appellant also picks up on the section head's reference to the fact that he has conducted "similar searches" in the past and takes from that that the Ministry is capable, and has in the past produced the information requested (perhaps to another requester).

The appellant notes that the Ministry is "one of the larger ministries in Ontario". In response to the Ministry's contention that it does not have sufficient staff with the requisite expertise to carry out the search without interfering with its operations, he states: "it is not my fault that the government has not retained sufficient technicians … I ought not to be prejudiced in obtaining personal information because of those decisions made by government".

Further with respect to this last point, the appellant indicates that he is willing to wait for "up to a year" for the information if that is what is required in order to obtain it.

Finally, the appellant points out that:

> Issues around who has access to the personal information of drivers are not new. The Ministry has been well aware of those issues as a result of complaints. The IPC Practices clearly identifies the issue as being of importance, as did the Ministry.
>
> The Ministry has chosen to whom it will provide and/or sell personal information. Several are clearly reasonable and appropriate, i.e. law enforcement agencies. The issue and the reason for my request is not to determine whether or not a law enforcement agency has requested my personal information; rather it is to find out to whom the Ministry has sold my personal information without my express permission and for what purposes.
>
> The Ministry takes the position that it does not know and cannot know who has access to the personal information. However, it is obliged, in my view, by the IPC Practices and by its own statements to have that information. Both the IPC Practices and the Ministry's brochures discuss "agreements" which stipulate what personal information will be provided and that the information may only be used for a specific purpose and cannot be shared with other organizations. I note that the Ministry did not produce or refer to those agreements in any substantive manner in its representations.
>
> How does the Ministry enforce these agreements? It obviously, by its own admission, cannot perform any audits or carry out other compliance measures to

ensure that the agreements are followed. If the Ministry is correct, it has no means to obtain even the basic information that is necessary to do so, i.e. who has accessed the information, when and for what purpose.

The information provided by the Ministry does not even identify to whom access is given through the agreements. What private investigators are given the information? Are these private investigators licensed by Ministry of Public Safety? What measures are taken to ensure that the request is a bona fide request? That the information is used only for bona fide purposes? Similarly, with insurance companies, what assurances is there that the personal information is not used to solicit business.

The Ministry does not comply with the underlying philosophy of the legislation or reasonable expectations of Ontarians. Furthermore, the Ministry does not comply with the requirements of the *Model Code for the Protection of Personal Information*, (CAN/CSA Q830-96) which was incorporated into federal legislation and is the basis for the Ministry of Consumer and Business Services consultation paper on protection of personal information in the private sector. The Ministry ought to be judged by the standards that are being imposed on the private sector – stands that were articulated by the CSA years ago.

Analysis

Comments made by former Commissioner Sidney B. Linden in Order P-50 are instructive in approaching this issue. He stated:

In the present appeals, the records at issue are various lists containing occupational health and safety data. The information is not recorded in the format requested by the appellant. However, records (as defined by the subsection 2(1) of the *Act*) which contain the information do exist in other formats which are in the custody or control of the institution. A record in the format requested by the appellant could be created from information stored in files (Appeal Numbers 880049 and 880050) or produced from information stored in computer databases (Appeal Number 880047, part of Appeal Number 880049, and Appeal Number 880051). To provide the appellant with access to the information stored in files, a manual search followed by collation would be required. For information stored in the computer, a computerized search and subsequent record production would be necessary.

The term "record", as defined in subsection 2(1) of the *Act*, encompasses two types of recorded information. The first is material which currently exists in some physical form, such as a book, microfilm, computer tape, etc. The other is a record which does not currently exist, but is "...capable of being produced from a machine readable record...", as outlined in paragraph (b) of the definition.

In my view, the duty of the institution differs according to which part of the definition of "record" applies.

In cases where a request is for information that currently exists, either in whole or in part, in a recorded format different from the format asked for by the requester, in my view, section 24 of the *Act* imposes a responsibility on the institution to identify and advise the requester of the existence of these related records. It is then up to the requester to decide whether or not to obtain these related records and sort through and organize the information into the originally desired format. [This is the approach, in fact, taken by the institution in response to request #4 (Appeal Number 880051); the appellant asked for statistical reports broken down in a certain format, and the institution directed him to published reports of this information in a different format.]

The *Act* requires the institution to provide the requester with access to all relevant records, however, in most cases, the *Act* does not go further and require an institution to conduct searches through existing records, collecting information which responds to a request, and then creating an entirely new record in the requested format. In other words, the *Act* gives requesters a right (subject to the exemptions contained in the *Act*) to the "raw material" which would answer all or part of a request, but, subject to special provisions which apply only to information stored on computer, the institution is not required to organize this information into a particular format before disclosing it to the requester.

The *Act* imposes additional obligations on institutions when dealing with computer generated information. When a request relates to information that does not currently exist in the form requested, but is "...capable of being produced from a machine readable record..." [paragraph (b) of the definition of "record" under subsection 2(1)], the *Act* requires the institution to create this type of record, "subject to the regulations".

Section 10 of Ontario Regulation 532/87, as amended, provides that:

> A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

Further, paragraph 3, of subsection 5(2) of the same Regulation clearly provides for a fee to be charged by an institution "for developing a computer program or other method of producing a record from a machine readable record...".

What constitutes an "unreasonable interference" is a matter which must be considered on a case-by-case basis, but it is clear that the Regulation is intended to impose limits on the institution's responsibility to create a new record.

> Thus it appears that, subject to the Regulation, the *Act* does place an obligation on an institution to locate information and to produce it in the requested format whenever that information can be produced from an existing machine readable record, and providing that to do so will not unreasonably interfere with the operation of the institution.

Applying this approach to the case at hand, I have considered the Ministry's representations with respect to the necessary steps for retrieving the requested information.

Order P-1572

As noted earlier, the appellant argues that the findings in Order P-1572 should be used as the benchmark for the application of section 2 of Regulation 460, and that the Ministry's estimates fall short of that mark.

In Final Order P-1572, Assistant Commissioner Tom Mitchinson considered whether the data elements on the ONBIS database constituted a record as defined by the *Act* and concluded that they did not based on the Ministry's description of what would be required to obtain them.

In that case, the database in question contained approximately 5.4 billion individual data elements. The Assistant Commissioner accepted that production of a record would require the use of computer hardware, software and technical expertise not normally used by the Ministry of Finance in the operation of its programs.

He also concluded that even if the record could be produced, to do so would unreasonably interfere with the Ministry's operations. This finding was based on evidence submitted by the Ministry in that case that it would take senior technical and business personnel approximately 275 days to produce and sever the record.

Finally, the Assistant Commissioner recognized that the production and severance of the record would require a significant service interruption to all users of the ONBIS system because the hardware was already operating at full capacity.

The Ministry responded to the appellant's argument in its reply representations:

> The appellant compares the Ministry's estimate of 20 hours of computer time to the time estimate provided in Order P-1572 … The total estimate was for 275 days, of which 160 days were for the analysis of data elements in the ONBIS databases. The remaining 115 days were presumably for activities such as program design, coding and testing.
>
> …The Ministry's figure of 20 hours … was an estimate for Central Processing Unit (CPU) time on the mainframe computer that hosts the Ministry's databases … this is but one step in a lengthy process which is preceded by the creation of the language for running the jobs to do this search, and is followed by the analysis of the search results, the most time-consuming phase of the process. With respect to the 20 hours of CPU time itself, it will take considerably longer than 20 hours

> to complete the search, as the mainframe is used primarily to process hundreds of thousands of transactions each day, and the search is a secondary use which will have to be carried out as time on the mainframe becomes available…
>
> …There are strong parallels between the facts as accepted by the Assistant Commissioner in Order P-1572, and the facts the Ministry is asserting in this appeal. In both cases, new computer programs must be developed to extract the requested information; in both cases, the hardware, software and technical expertise required to produce the records represents an abnormal and extraordinary use of these resources.

Discussion and findings

Previous orders of this office have considered the meaning of the term "unreasonable interference with the operations of an institution" in the context of claims that a request is frivolous or vexatious. Although made in a different context, they provide some guidance in assessing this issue.

Applying the findings in these previous orders, it appears that in order to establish "interference", an institution must, at a minimum, provide evidence that responding to a request would "obstruct or hinder the range of effectiveness of the institution's activities" (Order M-850).

While the size of the institution may be relevant to this issue, the availability of the fee provisions (and interim fee/access scheme), deposits and time extensions mitigate against a conclusion that an activity would interfere with the operations of the institution (Orders M-906, M-1071 and MO-1427).

Similarly, where an institution has allocated insufficient resources to the freedom of information access process, it may not be able to rely on limited resources as a basis for claiming interference (Order MO-1488).

In Order M-583, former Commissioner Tom Wright noted that, "government organizations are not obliged to maintain records in such a manner as to accommodate the various ways in which a request for information might be framed."

Similarly, government organizations are not obligated to retain more staff than is required to meet its operational requirements. I qualify this point, however, by adding, as I noted above, that an institution must allocate sufficient resources to meet its freedom of information obligations (Order MO-1488).

In my view, a determination that producing a record would unreasonably interfere with the operations of an institution is dependent on the facts of each case. While Order P-1572 is of assistance in establishing some parameters and considerations for assessing the issue, it should not be viewed as "the benchmark" or "test" for the application of this section of the regulation.

In this case, I have considered all of the circumstances at the Ministry; the types of databases it has, its operational needs and functions and the role of staff in performing those functions. I have also considered the Ministry's operational responsibilities vis-à-vis its freedom of information responsibilities. Based on the Ministry's explanation of the time and effort required to produce a record responsive to the appellant's request, I am satisfied that it has established that doing so would unreasonably interfere with its operations. In particular:

- I accept that the 20 hour time estimate given by the Ministry is the actual CPU time and that the search would not be done all at one time, but only as time on the mainframe becomes available.

- I also accept that the three steps involved in responding to the request require the use of specialized staff, that the Ministry has a limited number of such staff and their time and services are in high demand.

- I am satisfied that the specialized staff in this case are retained by the Ministry to meet its operational needs, as opposed to meeting its obligations under the *Act*.

- I find that these circumstances are different from those in Order MO-1488, where I found that the institution had allocated very limited resources to freedom of information and that it could not shift the responsibility for this to the appellant.

- I understand that the senior analyst may not need to dedicate all of his or her time to performing the tasks associated with step two, but I accept that attention to the task would disrupt other activities over that four week period of time.

- I accept that the size of the Ministry's databases and the formats used by it currently require extensive time and effort to extract the information that would respond to the appellant's request.

- I am satisfied that the size of the task and the extent of the effort required to do it would unreasonably drain the Ministry's limited resources that it has allocated to maintaining its databases and the systems used to run them.

Therefore, I find that even though a record is capable of being produced in response to the appellant's request, it does not fall within the definition of "record" because the process of producing it would unreasonably interfere with the Ministry's operations.

OTHER MATTERS:

Is the appellant's request a request for his own personal information?

To place this issue in perspective, it is noteworthy that under section 6.1 of Regulation 460 made pursuant to the *Act*, an institution may not charge a requester for the time taken to search for records containing that person's personal information. If I had found that there is a record that

would respond to the appellant's request, and this record contained the appellant's personal information, the Ministry would have been precluded from charging a fee for its retrieval.

The Ministry takes the position that the appellant has not made a request for his own personal information "as it appears in the MTO databases", but rather, is seeking access to a listing of organizations that have obtained access to his personal information. The Ministry submits that this information is distinguishable from personal information. The Ministry explains the rationale for this approach as follows:

> The Ministry is mandated to maintain personal information on drivers and vehicle owners. Any record to track accesses to this data would be a by-product of the core functions of the Ministry's systems. In order to find out who had seen the information on a particular person, any tracking data that is retained would have to be keyed to the identity of that individual. For each record of an access, there would also be a link to a database to identify who had made the access, and a general statement of the purpose for the retrieval (e.g. a municipality, in connection with an unpaid parking ticket, or Highway 407, to issue an invoice for toll charges). The data in such a system would not be the personal information of an individual, but a record of the activities of organizations conducting business with the Ministry. Thus, it would not be part of the personal information on an individual that that person is permitted to see. Since a system of this description does not currently exist, the Ministry is not obliged to create an entirely new record for something that is not part of its core mandate.

Personal information is defined in part as "recorded information about an identifiable individual". In the IPC Practices No. 25, it was noted:

> Together with the Ministry, we reviewed the various information contained in the databases and determined that it consisted of a mix of general and personal information. We also determined that the home address was the most sensitive item of personal information in the databases.

One of the fundamental purposes of the *Act*, as set out in Section 1, is to ensure that the government organizations that hold personal information protect individual privacy in the collection, use, storage, dissemination and disposal of that information.

In my view, the Ministry's arguments are without merit as it is immaterial whether the information requested is a "by-product of the Ministry's core functions" or whether the appellant is "permitted to see" the information.

The information requested is not a request for records "of the activities of organizations conducting business with the Ministry". It is a request for recorded information about how the appellant's personal information was used, which is information about the appellant.

Accordingly, I find that if the information were contained in a record, it would qualify as personal information.

Has the Ministry met its obligations to the public?

As repositories of personal information, government institutions have a duty to control, monitor and account for the manner in which that personal information is collected and used. The *Act* mandates this. And in doing so, it creates a reasonable expectation on the part of the public that institutions will be able to respond to public queries about the use of their personal information, except where specific exemptions apply (i.e. sections 21(5) and 14(3) of the *Act*).

There are no prohibitions against verification of the personal information in this instance, yet the Ministry is unable to do so.

In this decision, I have upheld the basis for the Ministry's refusal to provide the appellant with information about the manner in which his personal information has been used. I accept that there is a general public interest in government institutions operating in an efficient and fiscally responsible manner.

The *Act* recognizes that there will be times when the interests of individual requesters are subordinate to these other interests. Section 2 of Regulation 460 allows institutions to balance these two competing interests. It does not, however, relieve the Ministry from taking the necessary steps to ensure that the information it collects is accessible.

I strongly encourage the Ministry, when reviewing its information collection and storage methods and database creation, to take into account the functionality of its database model in order to facilitate accessibility to the public.

ORDER:

I uphold the Ministry's decision that Section 2 of Regulation 460 applies in the circumstances.

Original signed by: June 3, 2003
Laurel Cropley
Adjudicator