

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3030

Appeal PA10-402

Ministry of Transportation

December 23, 2011

**Summary:** The appellant made a request to the ministry for the address and address history for another individual. The ministry denied access to the information on the basis of the mandatory personal privacy exemption in section 21(1). The appellant argued that disclosure of this information was relevant to the fair determination of his rights under section 21(2)(d). The ministry's decision is upheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1), and 21(2)(d).

### OVERVIEW:

[1] The appellant made a request to the Ministry of Transportation (the ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a specified individual's address on record and "its/their effective date of change, if applicable."

[2] In response to the request, the ministry identified a record called "Driver's License History" and issued a decision denying access to the address and address history information contained in it pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*. The remainder of the information on the record was deemed not responsive to the request.

[3] At mediation, the ministry confirmed that it was relying on the factors in section 21(2) favouring privacy protection to deny access to the record. The appellant confirmed that he is not pursuing access to the information identified as not responsive and he is only interested in pursuing the address and address history of the named individual (affected person). The mediator attempted to contact the affected person but was unsuccessful.

[4] As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During my inquiry, I sought and received representations from the ministry and the appellant. The appellant's representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction* Number 7.

[5] In this decision, I uphold the ministry's decision.

## **RECORDS:**

[6] The address and address history of the affected person contained in the Driver's License History.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*?
- B. Would disclosure of the "personal information" be an unjustified invasion of the affected person's personal privacy under section 21(1)?

## **DISCUSSION:**

### **A. Does the record contain "personal information" within the meaning of section 2(1) of the *Act*?**

[7] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), which reads in part:

"personal information" means recorded information about an identifiable individual, including,

- (d) the address, telephone number, fingerprints or blood type of the individual,

- (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;

[8] Based on my review of the information at issue, in particular, the affected person's address and date of address, I find that the record at issue contains the personal information of the affected person only. The affected person's name, address and address history are all personal information within the meaning of that term as defined in section 2(1) of the *Act*. The record does not contain the personal information of the appellant.

**B. Would disclosure of the "personal information" be an unjustified invasion of the affected person's personal privacy within the meaning of section 21(1)?**

[9] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. The affected person has not provided his consent to the disclosure of his information and thus section 21(1)(a) does not apply.

[10] In my view, the only possible exception that could apply is section 21(1)(f). This provision allows an institution to disclose personal information to a person other than the individual to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f).

[11] The information at issue is the address and address history of the affected person. None of the presumptions in section 21(3) of the *Act* apply to this information. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

[12] The factors in paragraphs (a), (b), (c) and (d) of section 21(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection [Order PO-2265].

[13] The appellant submits that he requires the information for court purposes only. Accordingly, he argues that the factor favouring disclosure in section 21(2)(d) should apply, which reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

[14] For section 21(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>1</sup>

[15] The ministry submits that despite the appellant's submissions it has no way to ascertain whether the desired outcome of the court case will occur if the appellant is given access to the information at issue. Further the ministry submits that the appellant has not met the four-part test set out above in that:

- The appellant has not established that the personal information is relevant to a fair determination of legal rights i.e. the appellant's liability to pay spousal support.
- The appellant has not sufficiently established the importance of the information at issue to the outcome of the appellant's litigation.
- The appellant has not established that the personal information is required to ensure an impartial hearing as the appellant has not investigated other avenues of either locating the information or reducing his spousal support payment.

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<sup>1</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)

[16] Finally, the ministry submits that I should consider the fact that the affected person has not consented to the disclosure of his personal information and the public Notice of Collection. The ministry submits that in the public Notice of Collection, the public is advised that residential address information will be made available only for specified purposes and only to approved "Authorized Requesters" who have entered an agreement with the ministry controlling the use of the information. The ministry submits that the information at issue exceeds the information made available to "Authorized Requesters". I consider this to be the factor favouring privacy protection set out in section 21(2)(h).<sup>2</sup>

[17] I have considered the parties' representations on whether disclosure of the affected person's personal information constitutes an unjustified invasion of his personal privacy. While I am sympathetic to the appellant's position regarding his spousal payments, I am unable to find that he has established the factor favouring disclosure in section 21(2)(d). Like the ministry, I am not satisfied that the personal information at issue is relevant to the fair determination of the appellant's rights. I place significant weight on the fact that the affected person provided his address and his address history to the ministry in confidence. I further accept the ministry's argument that the affected person would not expect that his address or address history would be disclosed to the appellant for his private purposes.

[18] As section 21(1) is a mandatory exemption and there are no factors favouring disclosure, I must find that disclosure of the affected person's personal information is an unjustified invasion of his personal privacy. Accordingly, I find the exemption in section 21(1) applies to the information and I uphold the ministry's decision to withhold this information from disclosure.

**ORDER:**

I uphold the ministry's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

December 23, 2011 \_\_\_\_\_

<sup>2</sup> Section 21(2)(h) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information has been supplied by the individual to whom the information relates in confidence; and