Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3024

Appeal PA11-104

Ministry of Transportation

December 15, 2011

Summary: The appellant sought access to a letter written by a physician to the Ministry of Transportation, pursuant to section 203(1) of the *Highway Traffic Act*, which resulted in the suspension of her driving privileges. The ministry denied access to the letter, claiming section 20 (danger to health or safety). The exemption was found not to apply to the record and it was ordered disclosed to the appellant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 20 and 49(a)

Orders and Investigation Reports Considered: PO-1940

Cases Considered: *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)

OVERVIEW:

[1] The Ministry of Transportation (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to medical records relating to the appellant sent by any physician to the ministry, particularly any correspondence received in October 2010. The ministry located one responsive record, a letter dated September 25, 2010. After notifying the author of the record (the affected person) under section 28 of the *Act* and considering the submissions received

in response, the ministry denied access to the letter, relying on the discretionary exemption in section 49(a) of the *Act*, in conjunction with section 20 of the *Act* (danger to safety or health).

[2] The appellant appealed the ministry's decision to deny access to the record.

[3] Mediation did not resolve the appeal and it was transferred to the inquiry stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking the representations of the ministry and the affected person, initially. The ministry provided its representations, a complete copy of which was provided to the appellant, along with a Notice of Inquiry. I did not receive representations from the affected person. The appellant also provided me with brief representations indicating that she wished to proceed with her appeal and obtain access to the record.

[4] In this order, I find that the record is not exempt from disclosure under section 49(a), in conjunction with section 20.

RECORDS:

[5] The sole record at issue is a one-page letter dated September 25, 2010.

ISSUES:

A. Does the record contain personal information?
B. Does the discretionary exemption in section 49(a), taken in conjunction with section 20, apply to the record?
C. Did the ministry properly exercise its discretion not to disclose the record under section 38(a), in conjunction with section 20?

DISCUSSION:

A. Does the record contain personal information?

[6] 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) 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;

[7] 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 (Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225).

[8] I have reviewed the record and conclude that it contains the personal information of the appellant, as defined in section 2(1). Specifically, the personal information consists of information about the appellant's medical history, as well as her name, address, telephone number, OHIP number, date of birth, sex, and the author of the letter's views and opinions of the appellant, as contemplated by paragraphs (a), (b), (c), (d), (g) and (h) of the definition of that term in section 2(1).

[9] I also find that the record does not contain the personal information of the author of the letter. Any information contained in the letter is associated with this individual in his or her professional, not personal, capacity.

B. Does the discretionary exemption in section 49(a), taken in conjunction with section 20, apply to the record?

[10] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[11] Section 49(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, **20** or 22 would apply to the disclosure of that personal information. [my emphasis]

[12] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information [Order M-352].

[13] The ministry claims that the record at issue is exempt from disclosure under the discretionary exemption in section 49(a), in conjunction with section 20, which states:

> A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[14] For this exemption to apply, the institution must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

[15] The ministry relies on the evidence submitted to it by the affected person in response to the notification under section 28, which took place at the request stage. It submits that:

> . . . the information provided by the affected person to the Ministry was sufficient to support a decision in favour of non-disclosure, in that [his or her] concerns were not frivolous or exaggerated, and were supported by relevant information about the appellant.

[16] The ministry goes on to suggest that in general, the disclosure of the contents of notifications from physicians pursuant to their duty to report under section 203(1) of the *Highway Traffic Act* (the HTA) would have a chilling effect and would result in it receiving "less candid" information about drivers from physicians. It argues that while disclosure to the appellant is important, there also exists an interest on the part of the ministry and the affected person in this "obviously significant and sensitive" information.

[17] In his/her submissions to the ministry in response to the section 28 notification, the affected person provided the ministry with a very detailed and specific description of his/her reasons for wishing to have the record remain undisclosed to the appellant. I note that because of the appellant's uncooperative and hostile attitude, the events described in the letter may have been unpleasant for the physician. However, I must conclude that they do not provide a basis for a finding that the disclosure of the record could give rise to endangerment, as is required under section 20.

[18] In a postscript to Order PO-1940, Adjudicator Laurel Cropley made the following comment with respect to the difficulty experienced by front-line providers of services to members of the public who can sometimes be difficult or demanding:

> There are occasions where staff working in "public" offices, and particularly in places such as the OHRC or indeed in places like the IPC will be required to deal with "difficult" clients. In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20 or 14(1)(e) claim. Rather, as was the case in this appeal, there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established.

[19] Based on the evidence tendered by the ministry, including the submissions of the affected person in response to the section 28 notification, I find that it does not meet the required threshold for the application of section 20 to this particular record. While I find that the evidence of the physician gives rise to concerns about the appellant's conduct when attending at his/her office, it is not sufficient to meet the evidentiary standard for the application of section 20. Because the record does not qualify for exemption under section 20, I find that it is not exempt under section 49(a).

[20] I would also caution the appellant that it is important to bear in mind that individuals, like her former physician, who provide services to the public deserve to be treated in a civil and respectful manner. In my view, the behaviour described in the physician's account was deplorable and provided a reasonable basis for the physician notifying the ministry under section 203(1) of the *HTA*.

ORDER:

1. I order the ministry to disclose the record to the appellant by providing her with a copy by **January 23, 2012** but not before **January 16, 2012**.

2. I reserve the right to require the ministry to provide me with a copy of the record which is disclosed to the appellant.

Original Signed by: December 15, 2011
Donald Hale
Adjudicator