

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-3069

Appeal PA11-246

Ministry of Community Safety and Correctional Services

April 12, 2012

**Summary:** The appellant made a request to the ministry for records relating to a motor vehicle accident including witness statements and police occurrence reports. The ministry granted partial access, withholding information under section 49(b) of the *Act*. 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, section 2(1) (definition of "personal information"); 49(b), 21(2)(f), 21(3)(b).

### OVERVIEW:

[1] The appellant made a request to the Ministry of Community Safety and Correctional Services (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a motor vehicle accident. Specifically, the appellant asked for, "...the names and contact information for the witnesses to this accident, as well as the officer's field notes, witness statements and the complete motor vehicle accident report."

[2] The ministry located the responsive records granting partial access pursuant to the discretionary personal privacy exemption in section 49(b) with reference to the factor in section 21(2)(f) and the presumption in section 21(3)(b) of the *Act*. The ministry also indicated that some of the information was removed because it found the information not responsive to the request including the police codes.

[3] During mediation, the appellant confirmed that she is not pursuing access to the police codes or the information removed by the ministry as not responsive. The appellant indicated that he believed that additional records should exist. The mediator addressed this issue with the ministry who indicated that no further records exist. The appellant accepted the ministry's explanation and the search for additional records is not at issue in this appeal. Finally, the mediator contacted an individual whose interests may be affected by the outcome of the appeal (affected person) for his consent to the disclosure of his personal information. The affected person denied his consent.

[4] During my inquiry into this appeal, I sought representations from the ministry, the appellant and the affected person. I received representations from the ministry and the appellant only. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[5] In this order, I uphold the ministry's decision and dismiss the appeal.

## **RECORDS:**

[6] The records at issue consist of the following:

- Officer's notebook entries (3 pages) denied in part;
- Interview report (3 pages) denied in full.

## **ISSUES:**

- A. Does the information at issue contain "personal information" as defined in section 2(1) of the *Act*?
- B. Would disclosure of the information at issue be an unjustified invasion of another individual's personal privacy?
- C. Was the ministry's exercise of discretion proper in the circumstances?

## **DISCUSSION:**

### **A. Does the information at issue contain "personal information" as defined in section 2(1) of the *act*?**

[7] In order to determine which section of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where

disclosure of the name would reveal other personal information about the individual [paragraph (h)].

[8] 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].

[9] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

[10] 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].

[11] 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 [Orders P-1409, R-980015, PO-2225 and MO-2344].

[12] The ministry submits that the records at issue contain "personal information" about an identifiable third party individual (the affected person) which were collected by an OPP officer in the course of his investigation of the affected individual.

[13] The appellant submits that the records contain information about herself and the other driver (the affected person) in a motor vehicle accident. She submits that the other driver was acting in a business capacity, i.e. employee of trucking company, and thus any information relating to the affected person is not that individual's personal information for the purposes of the *Act*.

[14] As stated above, even if information relates to an individual in a business capacity, it may still qualify as personal information if it reveals something of a personal nature about that individual. In this instance, I agree with the appellant's position that the affected person was employed as a truck driver when he was involved in the motor vehicle accident.

[15] Previous orders of this office have established that information about persons in their professional or employment capacity may qualify as their personal information if it involves an evaluation of that individual's performance as an employee or an investigation into his or her conduct as an employee [see, for example, Orders P-939, PO-2414, PO-2516, PO-2524, MO-2395]. In the circumstances of the present appeal, the affected person's conduct was being investigated by the police to determine his role in the motor vehicle accident. Accordingly, I find that the information at issue is the

affected person's personal information as it concerns an investigation of his conduct as a truck driver and the role he may have played in the motor vehicle accident.

[16] Based on my review of the records and the information remaining at issue, I find that the record contains the personal information of the affected person within the meaning of that term in section 2(1) of the *Act*:

- Name address, contact number [paragraph (d)]
- Date of Birth [paragraph (a)]
- Driver's License number [paragraph (c)]
- Personal views and opinions [paragraph (e)]
- Name and other personal information relating to the affected person [paragraph (h)]

[17] The records at issue also contain the affected person's views of the appellant's vehicle and the cause of the accident. Specifically, on pages 2 and 9, the affected person's views of the accident are set out briefly. I find this information to be the appellant's personal information within the meaning of paragraph (g) of the definition of that term in section 2(1) of the *Act*. Nevertheless, I find that the appellant's personal information is inextricably linked with the affected person's personal information and as such cannot be severed and disclosed to her.

[18] As I have found that the records at issue contain the personal information of the appellant and another identifiable individual, I will proceed to consider whether this information is exempt under section 49(b) of the *Act*.

**B. Would disclosure of the information at issue be an unjustified invasion of another individual's personal privacy?**

[19] I have found that the withheld information at issue contains the personal information of both the appellant and the affected person. Section 47(1) of the *Act* 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, including section 49(b). Under section 49(b), where a record contains the personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

[20] If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[21] In determining whether the exemption in section 49(b) applies, sections 21(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 21(2) provides some criteria for the police to consider in making this determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy under section 49(b).

[22] As stated above, I provided the affected person with an opportunity to provide his consent to the disclosure of his personal information. He did not do so and accordingly, section 21(1)(a) does not apply in the circumstances.

[23] The ministry submits that I should consider the factor set out in section 21(2)(f) and the presumption in section 21(3)(b) in determining whether section 49(b) applies to the information at issue. These sections state:

(2) 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,

(f) the personal information is highly sensitive;

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[24] The ministry submits that the records at issue are "highly sensitive" within the meaning of section 21(2)(f) because they relate to interactions between a police officer and a possible suspect in the aftermath of a motor vehicle collision. The ministry submits that in Order P-1618 this office held that personal information of individuals relating to their contacts with the OPP as suspects was highly sensitive. The ministry argues that the records at issue in this appeal are analogous to the records at issue in Order P-1618.

[25] Further, the ministry contends that the presumption in section 21(3)(b) applies as the records were compiled and are identifiable as part of an investigation into a possible contravention of one or more laws governing the use of motor vehicles on a

highway, such as the *Highway Traffic Act* or the *Criminal Code*. The ministry notes that the OPP conducted the investigation as part of its normal policing duties in the aftermath of the collision, in order to determine whether the collision occurred due to the contravention of a law.

[26] The appellant did not submit representations on this issue.

[27] I have reviewed the withheld portions of the records. As stated above, much of the appellant's personal information has been disclosed to her and the withheld information relates to either the affected person only or unseverable information about the appellant and the affected person.

[28] It is evident that the information at issue was compiled by the police in the course of the investigation into the motor vehicle accident between the appellant and the affected person. On the basis of the information at issue and the police's representations, I find that the personal information at issue was compiled and is identifiable as part of the police investigation into a possible violation of law and falls within the section 21(3)(b) presumption. However, in the present circumstances, I am not satisfied that the personal information is highly sensitive and thus I find that the factor set out in section 21(2)(f) does not apply.

[29] As I find that disclosure of the personal information at issue is presumed to be an unjustified invasion of personal privacy then section 49(b) applies to exempt the information from disclosure, subject to my review of the ministry's exercise of discretion.

### **C. Was the Ministry's exercise of discretion proper?**

[30] The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[31] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[32] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[33] The ministry submits that it properly exercised its discretion in that it considered the appellant's right to her own personal information and the affected person's right to privacy. The ministry submits that it only severed the information of the affected person or information that would identify the affected person and disclosed the remaining information to the appellant. The appellant did not submit representations on this issue.

[34] Based on the information remaining at issue and the circumstances surround this appeal, I am satisfied that the ministry properly exercised its discretion to withhold the information at issue. The appellant's personal information has been disclosed to her and the remaining information relates to the affected person only or consists of personal information which cannot be severed.

[35] Accordingly, I find that the withheld portions of the records qualify for exemption under section 49(b).

**ORDER:**

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

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

\_\_\_\_\_ April 12, 2012