

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-3467

Appeal PA13-240

Ministry of Transportation

February 25, 2015

**Summary:** The appellant sought access to the names of driving instructors who have had their instructor licences revoked. The ministry denied access to the information, relying on the mandatory personal privacy exemption at section 21(1) of the *Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the information at issue is not "personal information" within the meaning of the *Act* and is therefore not exempt from disclosure.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 2(3).

**Orders and Investigation Reports Considered:** Orders MO-1858, MO-1862, and PO-2225

### OVERVIEW:

[1] A newspaper reporter made a request to the Ministry of Transportation (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

... the names of driving instructors that have had their driving instructor licences revoked since 2007 and the reasons for the revocations.

[2] The ministry first issued a fee estimate and interim decision on access based on its preliminary review of the information being sought by the reporter. After receiving full payment of the fee, the ministry issued a decision denying access on the basis that disclosure of this information would be an unjustified invasion of the personal privacy of the named individuals (i.e., those driving instructors whose driving instructor's licences had been revoked during the period covered by the request). The ministry relied on section 21(1) (personal privacy) of the *Act*.

[3] In addition, the ministry noted that a driving instructor's licence can become invalid for a number of reasons. Along with its decision letter, the ministry sent the reporter a document describing various reasons why a driving instructor's licence might be revoked. As its decision was to deny access, the ministry also returned the reporter's fee payment in full.

[4] The reporter appealed the ministry's decision to this office, becoming the appellant in this appeal. The appellant claimed that disclosure of the information is in the public interest and a matter of public health and safety. The possible application of the public interest override at section 23 of the *Act* was therefore added as an issue in this appeal.

[5] During the mediation stage of the appeal process, the appellant narrowed the scope of his request, by shortening the time period covered by the request and dropping the request for the reasons for revocation. By the end of mediation, the request had been narrowed to the names of driving instructors whose driving instructor's licences were revoked between 2010 and the date of the request (March 13, 2013).

[6] As mediation did not resolve the issues, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator conducts a written inquiry under the *Act*.

[7] As a preliminary matter, I decided to notify the approximately 300 driving instructors whose names are at issue in this appeal and give them an opportunity to make submissions. Over 70 individuals expressed an interest in participating.

[8] I issued a Notice of Inquiry to the ministry and these individuals, initially, inviting them to provide written representations. The ministry and approximately 30 individuals responded. I then sought and received representations from the appellant, which were shared with the ministry and the 30 affected parties. Although invited to do so, the ministry did not submit reply representations. Some of the affected parties provided reply representations.

[9] For the reasons that follow, I find that the information at issue is not personal information within the meaning of section 2(1) of the *Act*. As the personal privacy exemption cannot apply, I therefore order the ministry to disclose the information at issue to the appellant.

### **INFORMATION AT ISSUE:**

[10] The information at issue in this appeal is the names of 293 individuals whose driving instructor's licences were revoked between January 2010 and March 13, 2013.

[11] This information appears on two lists compiled by the ministry. One list is titled "List of Revoked Driving Instructors as of March 13, 2013," and covers a time period ending in December 2012. The second list is titled "List of Revoked Driving Instructors from December 28, 2012 to March 13, 2013[3]."

[12] The lists do not indicate the reasons for the revocations. Nor do they state the length of time of each revocation and whether the licences were reinstated.

### **DISCUSSION:**

#### **Is the information at issue "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[13] Under the *Act*, requesters have a general right of access to government information unless one of the exemptions applies. The government, and other parties that may object to disclosure, have the burden to demonstrate that the information should not be disclosed. In this appeal, the ministry relies on the personal privacy exemption at section 21(1) of the *Act* to withhold the names of driving instructors whose driver instructor's licences were revoked during the specified period.

[14] In order to determine whether the personal privacy exemption applies, it is first necessary to decide whether this information is the personal information of the driving instructors. The term "personal information" is defined in section 2(1) of the *Act* 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;

[15] 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.<sup>1</sup>

[16] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(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.

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<sup>1</sup> Order 11.

(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.

[17] 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.<sup>2</sup>

[18] 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.<sup>3</sup>

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

### ***Representations of the parties***

[20] The ministry submits that the information at issue in this appeal is personal information under section 2(1)(h) of the *Act*, as it consists of the names of the instructors and the fact that their licences have been revoked. The ministry submits that while the information relates to the loss of qualification on its face, virtually all reasons for revocation are related to matters that are personal in nature, such as the instructor’s criminal convictions, *Highway Traffic Act*<sup>5</sup> (HTA) suspensions, accumulated demerit points, driver status and court matters (for example, the failure to meet family support obligations). The ministry submits that when these factors are linked to an identifiable individual, the information constitutes personal information.

[21] The ministry refers to the “fit and proper” criteria under section 10 of the HTA, which reads that a licence may be revoked if “the licensee is not a fit and proper person to be a driving instructor, having regard to his or her character, integrity and past conduct.” The ministry submits that this information would also constitute information of a personal nature, based on the test set out in Order PO-2225, discussed below. In support of this submission, the ministry points to Order PO-2778, where the information at issue related to a complaint about the conduct of a lawyer. The adjudicator in that case found that because the complaint resulted in an investigation into the lawyer’s conduct, disclosure of the information would reveal something personal about the

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>5</sup> R.S.O 1990, c. H.8.

lawyer, and it therefore qualified as the lawyer's personal information under section 2(1) of the *Act*.

[22] Many of the 30 affected parties that provided written representations submitted that they believed the information they had given to the ministry was to be held in confidence. Some affected parties suggested that simply disclosing the number of instructors with revoked licences along with the reasons for revocation as a statistical reference, without disclosing any names, should suffice. Most of the affected parties who provided submissions expressed the view that this was their personal information that should not be disclosed to the requester. One affected party submitted that people should not have to be concerned that the personal information they share with the government in compliance with the law could end up being used without their consent to publicly shame them.

[23] Some of the affected parties indicate that their licences were revoked for regulatory reasons (e.g. as a result of reporting to the ministry that they obtained a licence in another jurisdiction), because they retired, or on the basis of mistake or misunderstanding. Some state that their licences have been or are in the process of being re-instated.

[24] The appellant relies on section 2(3) of the *Act* as a basis for his submission that the names of driving instructors who have had their instructor licences revoked is not personal information. He submits that the ministry grants licences to and keeps the names of driving instructors in a professional and business, but not personal, capacity. As such, the appellant submits that the names of the driving instructors and the fact of licence revocation is not "personal information".

[25] The appellant points to a number of other licenced professionals, including dentists, lawyers and long-term care home operators, whose names are publicly released when their licences are suspended or revoked. He submits that there is no rationale for the government's decision to release the names of those individuals while at the same time refusing to release the names of driving instructors with revoked licences.

[26] The appellant also submits that the names of driving instructors are public while the instructors are licenced. Driving instructors are required to provide their names to students and to show their licences when asked to provide evidence of their credentials, and many instructors use their names for marketing purposes.

### ***Analysis and findings***

[27] Order PO-2225 sets out this office's approach to the distinction between personal information and business/professional information. In that order, this office addressed the issue of whether the name of an individual who operates a business is that

individual's personal information or business information. The information under consideration in Order PO-2225 was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

[28] The order proposed two questions to help to illuminate the distinction between information about an individual acting in a business capacity as opposed to a personal capacity:

[...] the first question to ask in a case such as this is: "*in what context do the names of the individuals appear?*" Is it 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?

[...]

The analysis does not end here. I must go on to ask: "*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?

[29] The approach set out in Order PO-2225 has been applied in many subsequent orders of this office including Order MO-1858, which involved a request for access to the name of a holder of a specified taxicab licence issued by the City of Toronto. Applying the first part of the two-step analysis, the adjudicator found that as the taxicab license holder was carrying on a business, information relating to the licence was about the individual in a business and not personal capacity. Further, there was nothing "inherently personal" about the holding of the licence that would allow that information to "cross over" into the personal realm.

[30] This same reasoning was applied in Order MO-1862, which also involved a request for access to the names of the registered licence holders of two specified taxicabs in London, Ontario.

[31] I find the analysis in the above orders to be applicable in this case. The information at issue consists of the names of the affected parties, which reveals the fact that their driving instructor licences were revoked, at some point during the period in question, by the ministry. The affected parties obtained driving instructor licences from the ministry for the purpose of offering driving instruction services to the public. In other words, the licences were obtained and used for a business purpose. The ministry records the names of those whose licences are revoked in connection with its oversight of those business activities. Accordingly, with respect to the first question posed in Order PO-2225, ("in what context does the name of the individual appear?"), I find the

names of the affected parties appear in the record in a business, rather than a personal context.

[32] However, this is not the end of the analysis. I must go on to ask the second question posed in Order PO-2225: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?"

[33] The ministry submits that virtually all reasons for revocation of driver instructor licences are related to matters that are personal in nature. Based on this, it submits, when the factors based on which licences are revoked are linked to identifiable individuals, the information constitutes their personal information.

[34] The ministry's representations list many reasons for which a licence may be revoked, ranging from sensitive matters such as criminal convictions and unmet family support obligations, to more administrative matters such as driver licence exchanges with other jurisdictions and non-payment of fees. It indicates that it tracks revocation types based on five broad categories. Four of the five categories apply to the revocations at issue.

[35] The first category, applying to 39 of the revocations, involves convictions under criminal statutes or the HTA, or suspensions under the HTA. The second category, applying to 50 revocations, includes cancellations of a licence for reasons described as "invalid for three or more years", failure to complete a re-examination, licence exchange with another province, and licences cancelled at the request of the driver. Another category applying to 123 revocations, relates to accumulated demerit points. Finally, 86 revocations are based on the category "Invalid", which includes reasons other than those referenced in the Regulation. The ministry gave as examples medical suspensions, unpaid fines, failure to meet family support obligations and non-payment of certain fees.

[36] The ministry submits that all the above grounds of revocation relate entirely to personal information about the licensees. I do not agree. A number of the grounds of revocation would not, even if linked to an identifiable individual, reveal anything personal about that individual.

[37] I acknowledge that some of the grounds of revocation, if linked to a specific instructor, would reveal something personal about that instructor. However, given the various reasons for revocation, I find that disclosing the fact of revocation alone does not reveal anything personal about a particular individual. It discloses that the individual held a drivers' instructor licence and that at some point during the period covered by the request, the licence was revoked. These facts, on their own, relate to these individuals in their business and not personal capacity. In the absence of the reasons



for revocation, there is no evidentiary link between the names on the list and personal information about an instructor.

[38] In conclusion, I find that the information at issue in this appeal - the names of 293 individuals whose driving instructor's licences were revoked between January 2010 and March 13, 2013 - is about these individuals in a business rather than personal capacity, and does not qualify as "personal information" within the meaning of section 2(1) of the *Act*. Accordingly, the mandatory personal privacy exemption in section 21(1) does not apply, and I do not need to consider whether there is a compelling public interest in disclosure under section 23. I find that the information at issue must be disclosed to the appellant.

[39] While I have ordered disclosure of the information at issue in this appeal, I must acknowledge the concerns expressed by the affected parties. As indicated above, a number of the affected parties indicate that their licences were revoked for regulatory reasons (e.g. as a result of reporting to the ministry that they obtained a licence in another jurisdiction), because they retired, or on the basis of mistake or misunderstanding. Some state that their licences have been or are in the process of being re-instated. These affected parties communicate a worry that the disclosure of their names will tarnish their reputations through the suggestion that they have engaged in misconduct and affect their ability to conduct business in the future.

[40] Based on their submissions, it appears that a number of the affected parties had their licences revoked for technical, administrative or other non-culpable reasons. While the appellant may choose to make the information I have ordered disclosed public, in view of the concerns expressed, it is incumbent on him to ensure that the information is communicated in an accurate manner.

## **ORDER:**

1. I order the ministry to disclose the information at issue to the appellant by **April 1, 2015**, but not before **March 27, 2015**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the ministry to provide me with a copy of the record that is disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Sherry Liang  
Assistant Commissioner

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February 25, 2015