



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER P-1144

Appeal P-9400712

Ministry of Transportation



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NATURE OF THE APPEAL:

The Ministry of Transportation (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a complete list of all drivers in Ontario, including their names, addresses, driver's licence numbers, and other related information. The requester operates a business which locates heirs to estates.

The Ministry responded by denying access to the address information pursuant to section 21(1) of the Act (invasion of privacy), and the rest of the responsive information under section 22(a) of the Act (information published or currently available to the public). With respect to the section 22(a) exemption claim, the Ministry indicated that this information is already available from the driver information databases administered by the Ministry's Licensing and Control Branch. According to the Ministry, driver information is available from this database upon presentation of a record identifier such as a name, date of birth or driver's licence number.

The requester (now the appellant) appealed the Ministry's decision, and also raised the possible application of section 23 of the Act, the so-called "public interest override".

During mediation, the appellant narrowed the scope of his request to include only the names and driver's licence numbers of all Ontario drivers.

Further mediation was not successful, and a Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties.

After submitting representations, the Ministry identified that the appellant's business had a similar name to another organization whose known business activities raised concerns for the Ministry. A Supplementary Notice of Inquiry was sent to the parties to address this issue. I have reviewed the appellant's representations and the materials presented by the Ministry and, based on the evidence before me, I accept that the appellant and this other business are not connected.

DISCUSSION:

INVASION OF PRIVACY

Section 2(1) of the Act provides, in part, that "personal information" means recorded information about an identifiable individual, including "any identifying number, symbol or other particular assigned to the individual" (paragraph (c) of the definition).

The appellant submits that the requested information is not personal information because a driver's licence number does not reveal a person's identity to other members of the public. This argument is not valid in the circumstances of this appeal because the scope of the appellant's request includes both the name and driver's licence number. It is clear that both of these pieces of information taken together constitute recorded information about identifiable individuals, and I find that the information at issue in this appeal is personal information within the meaning of section 2(1) of the Act.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information, except in certain circumstances. Three of these circumstances are relevant to this appeal - sections 21(1)(c), (e) and (f), which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(c) - Information Available to the General Public

The requester submits that section 21(1)(c) applies because names and drivers licence numbers are collected and maintained for the purpose of creating a record that is available to the general public.

The Ministry makes the following comments with respect to the application of section 21(1)(c):

[U]nder the provisions of section 205 of the Highway Traffic Act, the Ministry of Transportation is required to collect and maintain personal information of all drivers and owners of vehicles for the purpose of creating and maintaining a record available to the public. Thus, this information, **other than residence address**, may be disclosed in response to an access request because section 21(1)(c) applies. Similarly, Part 3 of the Freedom of Information and Protection of Privacy Act does not apply because the information is maintained as a public record (section 37 of the FOIPPA). (emphasis in original)

The Ministry notes, however, that individual requests for driver licensing information are not processed unless specific identifiers, such as name or driver's licence number are provided.

However, the Ministry takes a different position with respect to requests for bulk access to driver licensing information:

The ministry submits that personal information which is maintained for the purpose of creating a record that is available to the general public, as contemplated by section 37 [and presumably section 21(1)(c)], changes its character where it is to be disclosed, not as responses to individual requests for information about single individuals or a limited group defined according to some reasonable criteria, but as the personal information of more than half of the total population of the Province.

The Ministry has a special bulk request policy which deals with large volume requests by individual requesters. Under that policy, requests are screened through the Licensing Administration Office to ensure that planned uses of the bulk information enhance road safety and do not involve uninvited solicitation. In order to qualify under this bulk access policy, a requester must apply for Authorized Requester status and, if granted, must enter into a formal agreement with the Ministry. This agreement controls the subsequent use of any bulk information provided by the Ministry.

I accept the Ministry's submission that requests for information in bulk raise unique considerations which are relevant to the application of section 21(1)(c). The Ministry does not release information in response to bulk requests unless the requester is granted authorized user status and meets the criteria set out in its policy. Clearly, bulk requests are not a routine matter but rather are subject to various constraints including a review process.

It is also important to note that even in response to individual requests, the Ministry does not release driver licensing information pursuant to section 21(1)(c) unless specific identifiers, such as name or driver's licence numbers, are provided. Therefore, it cannot be said that the Ministry routinely releases information in the form requested by the appellant, the names **and** driver's licence numbers.

In order to dispose of the issues under consideration in this appeal, it is not necessary for me to determine whether the Ministry's driver information database is a "public database", or whether the exception provided by section 21(1)(c) is applicable in the context of individual requests for access to driver information. I specifically decline to make these determinations, since these are complex issues with far reaching implications. However, as far as the appellant's request for bulk access to the names and drivers licence numbers of all Ontario drivers is concerned, I find that this information is not "collected and maintained specifically for the purpose of creating a record available to the general public", and section 21(1)(c) of the Act does not apply in the circumstances of this appeal.

Section 21(1)(e) - Research Purposes

The appellant also makes the following submissions with respect to section 21(1)(e):

[O]ur firm conducts research of the information that it collects in order to determine who is entitled to a given estate. Accordingly, it would appear that this exemption is applicable to our request.

In order to qualify under this section, it is not sufficient that a requester be involved in broadly defined "research" activity. Rather, all three conditions outlined in this section must be established. The appellant has not provided sufficient evidence to establish that these conditions have been met, and I find that section 21(1)(e) of the Act is not applicable in the circumstances of this appeal.

Section 21(1)(f) - Unjustified Invasion of Personal Privacy

Section 21(1)(f) of the Act states that a head shall refuse to disclose personal information to any person other than the individual to whom the information relates except if "the disclosure does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in the record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 21(4) of where a finding is made that section 23 of the Act applies.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2), as well as all other circumstances that are relevant in the circumstances of the case.

I have considered all of the presumptions contained in section 21(3) of the Act and find that none of them are applicable in the circumstances of this appeal.

The thrust of the appellant's submissions is that a list of driver's licence numbers would assist his firm, which locates heirs in order to settle estates. He states:

As we have explained to you, the nature of our work is to settle estate claims whereby information such as Licence Numbers is used to assist us with our efforts. A listing of Driver's Names and Licence Numbers will assist us with our worthy task and is thereby "justifiable".

The appellant identifies the following sections as relevant considerations favouring disclosure:

- section 21(2)(b) - promote public health and safety
- section 21(2)(c) - promote informed choice in the purchase of goods and services
- section 21(2)(d) - relevant to fair determination of rights

In support of his position the appellant states:

[T]he information requested will allow our firm to become more efficient and therefore able to distribute a greater amount of funds to more people in our Province. Several studies have drawn significant positive correlations between wealth and both physical and mental health. The information will also assist us in locating beneficiaries who will be in a better position to make informed decisions. Information gathered is relevant to a fair determination of rights and entitlement with respect to the settlement of the estate.

Having reviewed the appellant's representations, I find that none of the factors favouring disclosure of personal information are relevant considerations in the circumstances of this appeal.

Because section 21 is a mandatory exemption favouring privacy protection, in the absence of any evidence to support disclosure, I find that disclosure of the names and drivers licence numbers of all Ontario drivers would constitute an unjustified invasion of the privacy of these individuals, and section 21(1)(f) of the Act does not apply in the circumstances of this appeal.

Although not technically required in order to substantiate my findings, I want to make a few additional comments regarding the records at issue in this appeal.

As stated earlier, in order to obtain Authorized Requester status, bulk requesters must enter into an agreement with the Ministry. One of the stated objectives of this authorization process is to enhance security and privacy protection through controls on the use of records containing sensitive information. If I were to accept the appellant's position and order the disclosure of this bulk data, the Ministry's security measures would be rendered meaningless. There would be nothing preventing an appellant from, for example, creating a new database and passing the personal information along to any number of users.

Because of the way the drivers licence database is set up, if I were to order disclosure of drivers licence numbers, the appellant would also have unauthorized access to other data stored on the drivers licence database. The drivers licence number is essentially a key that may be used to access information beyond simply a driver's name. As the Ministry explains in its representations, the drivers licence database contains a great deal of sensitive personal information, including a listing of a driver's address, date of birth, sex, etc., much of which is accessible by anyone with access to a key identifier such as a driver's licence number. Disclosure of a list of all Ontario drivers and their licence numbers would provide the appellant with the means to access significant amounts of personal information, with no controls over potential use.

In identifying this potential for widespread, unregulated dissemination of personal information, I am not questioning the appellant's motives in making his request or suggesting that he has any intention of using the information in any improper way. I am simply pointing out that my decision has implications beyond the specific circumstances of this appeal.

Because I have found that the names and drivers licence numbers of Ontario drivers qualify for exemption under section 21(1) of the Act, it is not necessary for me to consider the possible application of section 22(a).

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that there exists a compelling public interest in the release of the information I have found to qualify under section 21(1). This raised the possible application of section 23 of the Act, which reads as follows:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

The appellant submits that individuals would be pleased to be advised of their entitlement to the receipt of funds from the proceeds of an estate and that this would serve a public interest. The appellant also maintains that its activities serve the public interest by creating income for beneficiaries which in turn creates employment opportunities and economic stimulation. In my view, the interest in disclosure of the names and drivers licence numbers of all Ontario drivers is a **private** interest of the appellant who is in the business of providing notice to individuals potentially entitled to proceeds from estates. I am not satisfied that the appellant has established the existence of a compelling **public** interest in the disclosure of the personal information, which would **clearly** outweigh the purpose of the section 21 exemption. Accordingly, I find that section 23 of the Act does not apply in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision to not disclose the names and drivers licence numbers of all Ontario residents.

Original signed by: _____

Tom Mitchinson
Assistant Commissioner

_____ March 13, 1996

POSTSCRIPT:

Over the past several years, this office and the Ministry have had a number of meetings and discussions on the proper characterization of the drivers licence database, and how to properly balance the privacy protection objectives of the Act with the business and administrative uses for the information stored on this database. My colleague, Assistant Commissioner Ann Cavoukian, has agreed to contact the Ministry to reactivate these discussions, in the hope that our two organizations can reach consensus on a proper balance, and provide the public with greater certainty on how the personal information contained in the database should be characterized, treated and used.