



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

ORDER PO-2410

Appeal PA-040034-2

Ministry of the Environment



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BACKGROUND:

The *Drive Clean* program

In 1999, the Ministry of the Environment (the Ministry) implemented a mandatory vehicle inspection and maintenance program called the *Drive Clean* program. The purpose of the program is to detect and reduce smog-related emissions from cars, trucks and buses. In its representations, the Ministry provided the following information regarding the program:

The *Drive Clean* program has four main goals, which have guided the Program since its inception: a) to reduce smog-causing pollutants by means of testing and repairing vehicles, b) to have zero tolerance for customer abuse by *Drive Clean* Facilities (DCF) or non-compliance by DCFs with Program requirements, c) to maintain public and industry support for the Program, and d) to have the *Drive Clean* Program operate as a revenue-neutral environmental initiative.

The Ministry points out that similar programs exist in other jurisdictions and states that Ontario's program has been one of the most successful in significantly reducing emissions from motor vehicles and in meeting the program's performance targets.

Results from vehicle testing under the *Drive Clean* program are gathered and stored electronically in computer systems maintained by the Ministry. The Ministry states that the *Drive Clean* database "contains program scientific, technical, commercial, and administrative data and some information in common with the Ministry of Transportation (MTO) Vehicle Registry database." The Ministry explains:

Gas emission results of every vehicle tested in the Program are stored in the *Drive Clean* database, along with the Vehicle Identification Number (VIN), the license plate number [assigned by the MTO], the Test Identification Number (TIN), which is also called the Vehicle Inspection Certificate number (VICN), the DCF identification, and the Inspector or Repair Technician identification. There are currently over 13,300,000 such records in the database. The vehicle description, VIN and license plate numbers are also contained in the MTO vehicle registration database. The remainder of the data are unique to the *Drive Clean* database.

The requirements of the *Drive Clean* program are set out in Regulation 361/98 made under the *Environmental Protection Act* and Regulation 628/90 made under the *Highway Traffic Act*. These regulations establish various emissions testing standards and requirements for the operation and registration of various types of vehicles in Ontario.

Previous requests

In early 2001, the Ministry received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about inspections carried out by facilities under the *Drive Clean* program in an electronic format, as well as hardcopy printed versions of the first 50 records.

The Ministry identified the responsive record as the data elements of the Ministry's *Drive Clean* database, excluding any portions that might reveal the identity of individuals. The Ministry denied access to this record pursuant to section 18 (economic and other interests). The requester, (the current appellant) appealed that decision (Appeal PA-010121-1).

After conducting an inquiry, former Assistant Commissioner Tom Mitchinson issued Order PO-1980. In that order, he found that the data elements relating to the *Drive Clean* program did not qualify for exemption under section 18. As it was not clear to him that the appellant had been provided with sufficient information to make an informed determination of how much information was contained in the database and in what format he wished to receive the information from the Ministry, he ordered the Ministry to provide the appellant with a representative sample of 50 emission test results in order to enable the appellant to determine what further information he required, and in what format. This would also allow the Ministry to determine what fees were required in order to comply with the provisions of his order.

In compliance with Order PO-1980, the Ministry issued a decision to the appellant and provided him with the hardcopy version of a representative sample of 50 vehicle emission tests results, with certain items of information removed. The Ministry also estimated that the total fee for producing the entire record would be \$593.

In response, the appellant advised the Ministry that the hardcopy version of the record did not contain the DCF identification numbers, also known as the unique garage identifiers, and that he wanted access to this information. The appellant also objected to the fee.

The Ministry responded by advising the appellant that disclosing the garage identifiers would reveal information about identifiable test facilities and this could not be done without their consent. The Ministry also revised its fee to the amount of \$323.

The appellant advised that he wished to appeal the Ministry's decision and fee. Appeal PA-010121-2 was opened and Assistant Commissioner Mitchinson conducted an inquiry into the matter.

The Ministry's position on the garage identifiers raised the potential application of section 17(1) of the *Act* (third party information). Accordingly, Assistant Commissioner Mitchinson advised the parties that because this exemption is mandatory, he was required by virtue of section 50(3) and 52(13) of the *Act* to notify the individual *Drive Clean* facilities (the facilities) as affected parties and provide them with an opportunity to make representations before deciding whether the garage identifiers fell within the scope of the exemption.

At the conclusion of his inquiry, Assistant Commissioner Mitchinson issued Order PO-2169 where he found that the garage identifiers did not qualify for exemption under section 17(1). He ordered the Ministry to provide the appellant with an electronic copy of all database entries relating to the *Drive Clean* program from its various database holdings, including all garage identification information, but excluding the TINs, licence plate numbers, VINs, and any other personal information. It should be noted that Assistant Commissioner Mitchinson specifically

stated in the Order that he was not making a determination as to whether all excluded data elements were personal information or not.

Following the issuance of Order PO-2169, Assistant Commissioner Mitchinson received a request from an affected party, a law enforcement agency, to reconsider his order as it pertains to all information relating to that law enforcement agency.

Assistant Commissioner Mitchinson granted a stay of Order PO-2169 in relation to the law enforcement information pending his reconsideration of that order. The Ministry disclosed the remaining information ordered disclosed to the appellant.

Given that the information at issue in this appeal includes all of the information subject to the reconsideration request, and given that within this appeal, the law enforcement agency that requested the reconsideration has been invited to provide representations on all issues raised by its request for reconsideration, and has done so, this order subsumes the reconsideration request, as well as dealing with the issues in Appeal PA-040034-2. The reconsideration request will therefore not be considered further by this office.

NATURE OF THE APPEAL

Subsequent to Orders PO-1980 and PO-2169, the appellant made a new request for additional information contained in the *Drive Clean* database. Specifically, the request read:

I would like access to an electronic copy of the data in the Ministry's *Drive Clean* database, including all data to the present date. For greater clarity, I seek the same data fields as have been disclosed to me twice previously pursuant to orders from the Information and Privacy Commissioner (order numbers PO-1980 and PO-2169), plus the vehicle identification number or VIN and the TIN numbers.

I would be pleased to receive the data in the same format in which it was disclosed on the previous occasions.

I would like to receive continuing access.

The Ministry issued a decision letter, granting partial access to the requested information, withholding the vehicle identification numbers (VINs) and the test identification numbers (TINs). The Ministry claimed the exemption under section 21(1)(f) (unjustified invasion of personal privacy) to deny access to all TINs and VINs, and the exemptions under sections 14(1)(e) (endanger life or safety) and 14(1)(i) (security) to deny access to all law enforcement related information.

In its decision, the Ministry applied a fee of \$207.50 to process the request.

The Ministry granted continuing access, on a quarterly basis, to the information to which it was granting access and provided future access dates.

The requester, (now the appellant) accepted the fee but appealed the Ministry's decision regarding access.

During the processing of the appeal, the Ministry claimed additional discretionary exemptions, under sections 14(1)(c) (law enforcement) and 14(1)(l) (facilitate commission of unlawful act) to deny access to all TINs. The appellant requested that those sections be added as issues in the appeal.

During mediation, the appellant confirmed with the mediator that he is not appealing the \$204.70 fee. The appellant also asked to remove the information covered by the section 14(1)(e) and (i) exemption claims from the scope of the appeal because it was to be addressed the reconsideration of Order PO-2169.

Further mediation was not possible and the appeal was transferred to Assistant Commissioner Tom Mitchinson for adjudication. With Assistant Commissioner Mitchinson's retirement, I have taken over responsibility for adjudication of this appeal.

In view of the fact that this order deals with both the reconsideration request and Appeal PA-040034-2, I will address the section 14(1)(e) and (i) exemption claims, and all other outstanding issues. I note that, along with the other issues, all parties were given an opportunity to provide representations on sections 14(1)(e) and (i). Moreover, as the appellant intends to receive ongoing access to data derived from the *Drive* Clean database, it is in the interests of all concerned that all remaining issues regarding access are dealt with comprehensively in one order that can then provide direction for the future.

Assistant Commissioner Mitchinson began this inquiry by sending a Notice of Inquiry to the Ministry and received representations in return. He also sent the Notice to three law enforcement agencies that could be impacted by the release of the information that has been withheld under section 14(1)(e) and (i), requesting submissions on the disclosure of all law enforcement related information as it pertains to their agencies. All three law enforcement agencies responded with representations.

Assistant Commissioner Mitchinson then sent the Notice to the appellant, inviting representations. The appellant responded with representations stating at the outset:

In order to simplify this adjudication and focus on the information that is most relevant, I have decided to withdraw my request for the TIN, or its Ontario equivalent, the VCIN. Therefore, the only remaining data element in contention will be the VIN, or vehicle identification number. I will, therefore, not make representations about the TIN or VCIN as these are no longer within the scope of my request.

In addition to the appellant's removal of the TINs or VCINs from the scope of the appeal, the appellant's representations raised issues to which I felt the Ministry and the three law enforcement agencies should have an opportunity to reply. I provided them with copies of the appellant's representations and the Ministry and one of the law enforcement agencies (law

enforcement agency #2) provided representations in response. Finally, I provided the appellant with an opportunity to reply to the submissions of the Ministry and law enforcement agency #2. The appellant did so.

RECORDS/EXEMPTIONS:

The information that remains at issue in this appeal (along with the exemptions claimed for it) consists of the following information associated with the vehicle emission test results contained in the Ministry's *Drive Clean* database:

- all VINs (section 21(1)(f))
- all information relating to unmarked police vehicles registered to law enforcement agencies, including make, model and year, VINs, results of emissions tests and identification number of the garage performing the tests (sections 14(1)(c),(e),(i) and (l))

DISCUSSION:

DO THE RECORDS CONTAIN "PERSONAL INFORMATION" AS DEFINED IN SECTION 2(1) AND, IF SO, TO WHOM DOES IT RELATE?

The Ministry submits that disclosure of all non-law enforcement related VINs found in the *Drive Clean* database would constitute an unjustified invasion of privacy and that the VINs are therefore exempt under the mandatory exemption in section 21(1)(f) of the *Act*. In order to determine whether section 21(1)(f) of the *Act* may apply, it is necessary to decide whether the VINs qualify as "personal information" within the meaning of the *Act* and, if so, to whom the personal information relates. "Personal information" 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 where 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;

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].

The information does not have to actually identify an individual from the information in the record to be "personal information". The test is whether the individual is identifiable from the record, not whether the person is actually identified in the record.

The test for whether information is "about an identifiable individual" is whether there is a reasonable expectation that the individual can be identified from the information. [Orders P-230, P-401, P-774, M-438 M-570, M-585, P-952, P-975, M-91, P-1208). This depends on whether the information in the record is of a nature or is sufficiently detailed to permit a recipient of the document to draw accurate inference about the identity of an individual to whom the information relates (Order M-480).

Representations

In its initial and reply representations, the Ministry makes two general arguments in favour of its position that disclosure of the VIN would amount to disclosure of personal information:

1. Previous IPC orders have found that the VIN is the personal information of the vehicle owner;
2. Once in possession of a VIN, an individual is able to use information available to the public to identify the owner of the vehicle. This, in combination with the other information contained in the Drive Clean database, amounts to the disclosure of the vehicle owner's personal information.

On the first point, the Ministry submits:

The IPC/O has already held, twice, that the records involved in this appeal contain personal information.

In Order PO-1980, the adjudicator stated:

I have decided in the circumstances to err on the side of caution, and to order the Ministry to sever information that I have

concluded would most likely fall within the scope of the restriction on access identified by the appellant. Accordingly, I will include a provision in this order requiring the Ministry to sever any reference to any identifiable individuals included in the database, including licence plate numbers and vehicle identification numbers.

[Ministry's emphasis]

The adjudicator further stated that:

I order the Ministry to provide the appellant with the printed content of all database entries relating to a representative sample of 50 vehicles tested under the *Drive Clean* program, with the TIN numbers, licence plate numbers, vehicle identification numbers, and any other personal information severed prior to disclosure.

(Ministry's emphasis)

The language and intent of the previous order was followed in Order PO-2169, in which the adjudicator stated:

I order the Ministry to provide the appellant with an electronic copy of all database entries relating to the *Drive Clean* program from its various database holdings ... and excluding the TIN numbers, license plate numbers, vehicle identification number, and any other personal information.

(Ministry's emphasis)

On the second point, the Ministry submits:

Within the context of the *Drive Clean* database, the VIN identifies specific vehicles which may be linked to individuals and their whereabouts at particular dates and times. The information about the vehicle may be linked directly to information that will identify an individual who will be denied or allowed authorization by the Province of Ontario to register a vehicle for use on the roads. It is the VIN that also enables data linkage to information on the MTO database which contains personal information related to the individual who owns the vehicle that is listed in the *Drive Clean* database.

In Order PO-1986, similar information was found by the adjudicator to meet the definition of personal information. That order dealt with a request for information (including names and addresses and amounts owing, etc) of individuals and businesses that owed fines under the *Environmental Protection Act*. The adjudicator in this Order was "satisfied that the names of the individuals, **together** with the amounts of the fines ... constitutes information 'about' these

individuals.” Following this line of reasoning, the Ministry submits that the location, result and frequency of the testing on a vehicle by an individual vehicle owner together with the VIN number constitutes information about the individual vehicle owners.

In Order PO-1621, the adjudicator discussed a distinction between the disclosing of an individual’s name where the disclosure would reveal other personal information “relating to an individual” and disclosing an individual’s name where the disclosure would reveal information that is not “personal” in the sense that it is not “about” that person. The adjudicator makes reference to the second situation being information relating to the organization which the individual represents, or to the corporation or Government office which employs the individual. However, the Ministry submits that the disclosure of the VIN contained in the records at issue would reveal information “about” the individual through data matching with information already publicly available from the MOT database.

The *Drive Clean* database does not contain the vehicle owner’s name. It does contain the VIN for each vehicle that has been emissions tested. Once the VIN and the vehicle owner’s name are matched, it is possible to create a historical electronic surveillance of activities for that vehicle owner. This surveillance of activities would include the date, location and time of each emissions test. This is intrusive and mounts to an invasion of personal privacy.

In response to the Ministry’s first argument, the appellant provided the following:

The Ministry of the Environment asserts that the commissioner’s office has twice found that the VINs constitute personal information, in Orders PO-1980 and PO-2169. This is not so. In my original request for the Drive Clean data sent to the Ministry in December 2000, I asked that personal information be excluded. Order PO-1980 did not reach any conclusions as to which data elements constituted personal information. Instead, it said some would likely do so, and ordered those most likely to be personal information to be removed from the scope of the request simply to comply with my own request not to include personal information. Order PO-2169 merely followed the form of the first order on this point. Neither order considered the issue in any depth, and neither can be used as a precedent to justify the severing of the vehicle identification numbers.

With regard to the Ministry’s second argument, that is, that the VIN can be used to identify the owner of the vehicle and should therefore be considered personal information, the appellant submitted the following:

The VIN, or vehicle identification number, is a unique 17 digit alpha-numeric identifier. It uniquely identifies each motor vehicle manufactured in the world. The VIN is comprised of elements that identify the place of manufacture, the manufacturer, the model and model year, and the individual vehicle by means of a

trailing numeric serial number. Attaching a VIN to a vehicle is a requirement of regulations made under the federal Motor Vehicle Safety Act. The regulation is attached as attachment 1.

The VIN is never assigned to an individual. No individual is ever issued a VIN. When a vehicle is sold, the VIN goes with the vehicle. The regulation also requires that the VIN be visible from “outside the vehicle adjacent to the left windshield pillar.”

Personal information is information about any identifiable individual. The act provides numerous examples of personal information, and all of these are information about people. One of the examples given is “any identifying number, symbol or other particular assigned to an individual.”

The VIN is certainly an identification number, but it is not assigned to any individual. Instead, it uniquely identifies a vehicle and remains affixed to the vehicle from the time of manufacture until the vehicle reaches the end of its life cycle. The VIN for any vehicle is easily discernible by reading the VIN plate attached just behind the windshield on the driver’s side of the vehicle. The VIN is also printed on the information sticker affixed to the door pillar on the driver’s side of the vehicle. The VIN is not personal information. It is no different than the serial number on any other product. It does not meet the most basic test of the definition of personal information, that it be about a person.

The Information in the Drive Clean test database is information about the performance of motor vehicles in emissions tests. None of the information relates to individuals in any way whatsoever. There is no field of information which is about individuals in any way.

The appellant notes that, for a fee of \$12, it is possible to purchase from the Ministry of Transportation an abstract on a vehicle’s ownership based on the vehicle identification number, and makes the following submission:

Even if one could obtain more than just the name from MTO, and the public and media cannot do so, the personal information from MTO would not change the fact that the information in the Drive Clean Database is not personal information, but information about vehicles and tests.

The truth is that connecting the Drive Clean data to the MTO data, even if this could be done in a bulk manner, which it cannot, merely reveals the name of the owner of the vehicle. This is a search that can be conducted any time by any person, on any vehicle in Ontario, for a fee of \$12 per vehicle searched, if the person is in possession of a valid VIN or license plate number. For the government’s own public policy reasons, this information is freely available. The Ministry, cannot, in good faith, argue that the existence of this limited search capability is reason to deny access to VINs in the Drive Clean database.

The Ministry maintains in its representations that the test times and locations in the test data, when combined with the information in the MOT database, would make it possible to conduct historical electronic surveillance of a vehicle owner's activities with regard to Drive Clean testing.

This line of reasoning ignores a key fact: the database does not contain information about who took a vehicle to a Drive Clean facility for its test.

The regulations which underpin Drive Clean require only that a vehicle be tested at certain times. They do not state who must accompany the vehicle for testing. There is no way for a person reviewing the data in the database to know who took the vehicle to the testing station, when they took it there, nor when they took it away again. There is no particular reason to assume that the person whose name appears on the registration is the person taking the vehicle for a test. All the test data reveals is that at a particular time, on a particular date, a vehicle began a Drive Clean test, that at a subsequent time the test ended, and that the test produced certain results. There is no information about what happened before or after the test. There is no reason to assume that the registered owner of the vehicle was present at the testing location at the time of the test. In truth, the test database reveals nothing about that person's activities or whereabouts.

[Ministry's emphasis]

Analysis and finding

The Ministry argues that previous orders issued by this office have held that VINs qualify as personal information. The appellant takes the position that those orders did not consider in depth whether the VINs qualified as personal information under the *Act* and that those orders cannot be considered precedents on the issue.

Having read the previous orders referred to by the Ministry, and having considered the representations of both parties, I find that the issue of whether the VIN qualifies as personal information under the *Act* has not been definitively considered by this office. In Orders PO-1980 and PO-2169, the appellant requested various data elements of the *Drive Clean* database. In those orders, the Ministry did not claim the mandatory exemption under section 21(1), nor was it included as an issue in those appeals, as the appellant made it clear that he had no interest in information that might qualify as personal information.

In Order PO-1980, Assistant Commissioner Mitchinson indicated that, from his review of the sample records, it was not clear to him which data elements contain or would reveal personal or identifiable information. Since the parties had not made it clear in their representations which data elements would, in their view, contain or reveal personal and identifiable information, the Assistant Commissioner decided to "err on the side of caution" and removed the VINs, licence plate numbers, as well as other data elements from the scope of the appeal. Assistant Commissioner Mitchinson also followed this approach in PO-2169 where only one data element was at issue.

It is clear to me that in those appeals neither the Assistant Commissioner nor the parties specifically turned their minds to the issue of whether VINs qualify as personal information. Accordingly, Assistant Commissioner Mitchinson did not make any determination with respect to that issue. With the benefit of representations from the parties, the issue of whether VINs qualify as personal information under the *Act* is now properly before me in the current appeal.

Having carefully considered the Ministry's representations and the various orders identified in support of its position, as well as the representations of the appellant, I have reached the conclusion that the VIN is not information "about an individual", identifiable or otherwise. Previous orders have found that information concerning residential properties is information **about a property** and not **about an identifiable individual** (Orders MO-188, MO-189, PO-1847). Similar reasoning can be applied in the circumstances of the current appeal. In my view, the VIN is accurately described as information **about a vehicle** rather than **about a vehicle's owner** in a personal capacity. The VIN is information that is tied to the vehicle, not the owner; when the identity of the owner of the vehicle changes, the VIN remains the same.

The Ministry has argued that the VIN is information about an "identifiable individual" because it is an identifying number assigned to an individual within the meaning of paragraph (d). I do not agree. As stated above, the VIN is a number that is assigned to a **vehicle** rather than an **individual**. In my view, the VIN does not fall within any of the types of information listed in subsections (a) to (h) of section 2(1) of the *Act*. As the list in section 2(1) is not exhaustive, the fact that VINs are not within a category of information listed is not conclusive; however, this list provides guidance as to the types of information that is personal information. To be considered personal information, a piece of information would generally be of a kind that is similar in character to the information in the list.

I acknowledge that, in some circumstances, a VIN might be considered "personal information". For example, in a circumstance where the VIN is found in combination with other information in a record, for example the vehicle owner's name and the particulars of a motor vehicle accident in which the owner and the vehicle were involved, a VIN might be considered "personal information". In the circumstances of this appeal however, the VIN can only be linked to other information in the *Drive Clean* database such as the time, date, location and result of *Drive Clean* emissions tests on a vehicle. In my view, this is not information that is "personal" because it is not "about" an individual.

The Ministry also submits that the VIN can be linked to the owner's name through a request to the Ministry of Transportation. For a fee, it is possible to purchase an abstract on a vehicle's ownership based on the VIN, which contains the name of the owner and no other personal information. In my view, the fact that a person who has a VIN can legally use it to obtain access to a separate record that contains the name of the owner of the vehicle does not in itself make the VIN "information about an identifiable individual". In my view, the determinative factor is the fact that, as already noted, the VIN is, in essence, information "about" the vehicle. Merely linking the vehicle to its owner does not, in itself, convert the VIN into information "about" the owner.

In both its representations and reply representations, the Ministry also makes reference to the 2003 Annual Report of the Information and Privacy Commissioner of Ontario. Among the issues dealt with by the Commissioner in the report is that of publicly available personal information. As quoted by the Ministry, the Commissioner made the following observation:

Ontario needs to initiate a public consultation process to identify how the *Acts* can be amended to properly deal with the treatment of publicly available personal information in an electronic format...If the entire content of these registries is readily accessible in electronic format, the personal information of citizens can be easily retrieved, searched, sorted, manipulated and used for purposes that have no connection to the original purpose for which the information was collected.

The Ministry does not explain how this section of the 2003 Annual Report supports its position that the VIN is personal information. However, I note that the Commissioner's comments are only relevant once it is determined that the publicly available information in fact contains elements that are "personal information". This is the case, for example, with the MTO driver registration database. However, since I have determined that the VIN is not personal information, disclosure of the VIN as part of the Drive Clean database does not raise the issue of access to registries of publicly available personal information.

Accordingly, in the circumstances of this appeal, I find that the VIN does not qualify as personal information as defined in section 2(1) of the *Act*. As the personal privacy exemption in section 21(1)(f) can only apply to information that qualifies as personal information under section 2(1), it is not necessary for me to determine whether section 21(1)(f) applies. As no other discretionary or mandatory exemptions apply to the non-law enforcement related VINs, I will order that they be disclosed to the appellant.

LAW ENFORCEMENT

Two issues have been raised in this appeal with regard to law enforcement:

- The Ministry and the three affected party law enforcement agencies claim that all information in the *Drive Clean* database that relates to unmarked law enforcement vehicles registered to law enforcement agencies are exempt from disclosure under the discretionary exemptions in 14(1)(e), (i) and (l). This includes the make, model and year of the unmarked vehicles, VINs, results of emissions tests and identification number of the garage performing the tests.
- The Ministry also claims that information related to its own covert vehicles used as part of the *Drive Clean* program are exempt from disclosure under the discretionary exemption in 14(1)(c).

I will first deal with the application of sections 14(1)(e), (i) and (l) to law enforcement vehicles.

General principles

The Ministry and the three affected party law enforcement agencies claim that all information in the *Drive Clean* database that relates to unmarked law enforcement vehicles, including their VINs, are exempt from disclosure under the discretionary exemptions in sections 14(1)(e)(i) and (l). Those sections read:

14(1)A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

The term “law enforcement” is used in several parts of section 14, including section 14(1)(e), and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 14(1)(e): life or physical safety

In the case of section 14(1)(e), 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, Officer of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003]. The term "person" is not necessarily confined to a particular identified individual and may include any member of an identifiable group or organization [Order PO-1817-R].

The Ministry and the three affected parties take the position that the disclosure of the VINs of unmarked law enforcement vehicles contained in the *Drive Clean* database could reasonably be expected to endanger the life or physical safety of police officers and personnel in the manner contemplated in section 14(1)(e). The Ministry further submits that in addition to the VINs, other information related to unmarked law enforcement vehicles is also stored in the *Drive Clean* database and that because disclosure of such information could also threaten the lives of officers it too should be protected under section 14(1)(e). Generally, the Ministry submits that it is concerned that releasing the VIN, in combination with other *Drive Clean* data for unmarked police vehicles, could negatively impact law enforcement in general and that the law enforcement information should be protected under paragraphs 14(1)(e), (i) and (l).

Law enforcement agency #1 submits that its agency meets the definition of "law enforcement" or "policing" as it is an agency that provides policing services to a particular region. It submits that with respect to the application of section 14(1)(e), the persons who would be subject to the threat are "law enforcement" officers. Law enforcement agency #1 submits:

In addressing the issue of "endangering the life or physical safety", this institution considered the very nature of the [agency's purpose]. Police officers investigate and charge those individuals who are alleged to have committed criminal acts.

In representations that must remain confidential, law enforcement agency #1 goes on to describe how the disclosure of the information contained in the *Drive Clean* database could reasonably be expected to result in activities that they submit could reasonably place the life or physical safety of police officers in "significant jeopardy".

Law enforcement agency #1 concludes its representations on the application of section 14(1)(e) by stating:

It is the position of this institution that the life and/or physical safety of law enforcement officers, as well as civilian members of [named law enforcement agency] and members of the public would be jeopardized by the release of the VIN, TIN, and other information [contained in the *Drive Clean* database].

Law enforcement agency #1 also submits that the Ministry assured them that the information contained in the *Drive Clean* database would be kept in the strictest confidence.

Law enforcement agency #2 submits that their agency “has gone to great lengths to protect the identity of police vehicles, specifically those used for undercover and surveillance purposes from persons outside of the Service (and even those within, on a need to know basis only)”. In representations that have not been disclosed for reasons of confidentiality concerns, law enforcement agency #2 describes the various protections taken by the agency to protect the identity of such police vehicles. It submits “the release of the VINs and TINs (VICNs), would most certainly put the identity of unmarked police vehicles at risk of being identified as ... police vehicles”.

Addressing the application of section 14(1)(e) specifically, law enforcement agency #2 submits:

The [named law enforcement agency] identify Police Officers and the general public as third parties as the individuals whose lives and their physical safety could reasonably be expected to be endangered as a result of disclosure.

A certain number of police officers are assigned at any time to “old clothes” (drug squad, intelligence, morality officers, etc.) or “plain clothes” duties, typified by the detectives in field units and specialized squads (homicide, fraud, etc.). These same officers are assigned unmarked (surveillance) vehicles. These officers go about their duties in unmarked (surveillance) vehicles precisely because they can operate most efficiently and efficaciously in public where they are not readily identified as police officers.

Should such individuals be easily identifiable as police officers at certain stages of their investigative work, their tasks would be made more difficult, or sometimes impossible. For example, interviewing potential witnesses in certain situations could endanger either the interviewer or interviewee.

Law enforcement agency #2 points to the judicial review of Order M-913 where O’Leary J found that “identification of police officers could reasonably be expected to make their work more dangerous in many situations” and submits that jeopardizing the security of the vehicles could in turn jeopardize the identity of police officers and make their work more dangerous.

Law enforcement agency #2 acknowledges that an institution relying on the section 14 exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm and points out that section 14(1)(e) requires the application of a different test which I have previously outlined above:

However, when dealing with the harms associated with the endangerment to life of physical safety of a person [sections 14(1)(e)] a different test applies. In these limited circumstances, the court in *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Ministry of Labour, Office of the Worker Advisor)*, (1999), 46 O.R. (3d) 395 at 403 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.) stated that, if an institution has established a reasonable basis for believing that a person’s safety will be endangered by disclosing a record, and these reasons are not a frivolous or exaggerated

expectation of this harm, then section [14(1)(e)] may be properly invoked to refuse disclosure (Orders PO-1772 and MO-1262).

...

Undercover officers must and do seriously guard their identities. Clearly the connection between our surveillance vehicles VINs and the [named law enforcement agency]...could conceivably place Police Officers and members of the public in an endangered or even life threatening situation.

The representations submitted by law enforcement agency #3 are almost identical to those submitted by law enforcement agency #2.

The appellant's representations on the application of the law enforcement exemptions focus on the VINs, and whether their disclosure could reveal the ownership of police or *Drive Clean* surveillance vehicles. The appellant submits that disclosure would not reveal ownership of any vehicles, police or otherwise:

The first reason this is impossible relates to the nature of databases and the manner in which they can be searched.

The VIN is a single column of information in the database. Each of more than 12 million test records includes the VIN for the tested vehicle. There would be no way when reviewing more than 12 million testing records to know which VINs might belong to police or *Drive Clean* surveillance vehicles. It is the computerized equivalent of flying in an aircraft at 20,000 feet and trying to pick out unmarked police or *Drive Clean* surveillance vehicles from the lines of traffic on Ontario's highways. They essentially all look the same. Similarly, the VIN contains no information relating to or identifying persons or institutions. Think for a moment, whether you could identify [named individual's] car by looking through a list of anonymous VINs. There would be no way to do so. The impossibility of this task is magnified by the fact that police or *Drive Clean* surveillance vehicles would amount to, at most, a few thousand out of millions and millions of vehicles subject to tests.

Even if a user focused on one vehicle and its VIN, and that vehicle were by coincidence a police or *Drive Clean* surveillance vehicle, how would a database user identify it as such? Neither the *Drive Clean* database nor the publicly available abstracts from the Ontario Ministry of Transportation provide any information that would tend to identify which vehicles are police or *Drive Clean* surveillance vehicles. There is no field of data in the database that identifies the use of any vehicle.

The Ministry maintains that the VINs could be matched with information in MTO's vehicle registration database. But the only way to match all of these VINS with the MOT database would be to spend more than \$72,000,000 on

paper-based vehicle abstracts (at \$12 each for more than 6 million registered vehicles, not including tested vehicles no longer on the road which would add to the cost) and compare them by hand. MTO does not make electronic data available so bulk matching of data is impossible. If four records could be compared by hand per minute, the job would take eight and a half years for the 12 million plus testing records, assuming one worked 16 hours a day and did not take time off even to eat. In effect, it could not be done, even if one had the \$72,000,000. Even then, the searcher would be thwarted because the ownership would not likely be recorded in such a manner as to make it possible to identify surveillance vehicles.

The Hamilton Police Service, for example, takes measures to ensure its surveillance vehicles cannot be identified through the MTO data and other police forces do the same. **MTO will, upon request from any police force, obscure the ownership information in the database so the real owner is not apparent.** MTO assured me that police forces do take advantage of this. **The same is done to obscure the identity of Drive Clean surveillance vehicles.** Even if the VINs were matched to the MTO data, the real owners name would not be available in the case of police or Drive Clean vehicles. I have attached an e-mail exchange with [named individual], an MTO communicator, in which he confirms that these measures are taken. ... The police and Drive Clean vehicles are therefore not identifiable even if one has a VIN.

It would not be possible, even remotely possible to identify either police or Drive Clean undercover vehicles from the millions of anonymous VINs in the Drive Clean testing database. As it would not be possible to identify the vehicles, there would be no threat to investigative techniques, public or officer safety or the security of any vehicle carrying items. Release of the VINs would also not facilitate the commission of any crime or hamper the control of crime.

Even though I submit that it would not be possible to discern the identity of law enforcement surveillance vehicles (either police or Drive Clean) through the Drive Clean data and VINs, I will address the likelihood of harms if the impossibility occurred. A user who somehow identified such a law enforcement vehicle from the data would still have to identify it on the road, no easy task. One would need to patrol the streets and check the VIN plate on each and every vehicle (by conspicuously leaning over the windshield and checking the VIN) that met every description until one found the one with the VIN indicated in the database. This is, in itself, a nearly impossible task given that hundreds of thousands or millions of units are produced of popular vehicles. Remember that the Drive Clean database includes only the model year and make and model of a vehicle, and does not contain other crucial identifiers such as the vehicle's colour. Even if one postulated that the user would then be on the lookout for vehicles of that make and model year, how would they know which one might be the police or Drive Clean surveillance vehicle? As both police forces and Drive Clean purposely choose common vehicles for undercover work – it would be of little use

to choose uncommon vehicles that would stand out – there is no reason to believe that someone with ill purposes in mind would be able to usefully identify a police vehicle or Drive Clean vehicle even if they knew the VIN, make, model and model year.

In essence, then, an individual seeking to use an emissions-testing database to identify police or Drive Clean surveillance vehicles would face three nearly impossible challenges: (1) Actually identifying a surveillance vehicle in the data; (2) Associating the vehicle with its actual ownership; and (3) finding the vehicle once identified, if that were possible. With all of these hurdles, it is difficult to imagine that anyone's safety would be threatened, nor that the security of a vehicle carrying items would be endangered.

I submit that the section 14 argument with regard to the VINs is a red herring, an argument designed to divert attention that may appear convincing at first, but upon closer examination is shown to be fallacious.

Law enforcement agency #2 was the only affected party that chose to reply to the appellant's submissions on the application of the law enforcement exemptions. They submit:

The appellant claims the VIN number itself contains no information identifying individuals or **institutions**, however, the [named law enforcement agency] maintains the connection between the VIN and owner information if acquired would put our officers, the public and the security of our vehicles at risk. While the [named law enforcement agency] appreciates the appellant's wide range of examples and statistics on how difficult it would be to pinpoint the police vehicles/surveillance vehicles, the [named law enforcement agency] believes that by releasing the VINs you would be handing another tool to those who are attempting and have already attempted to undermine the security of our vehicles.

Section 14(1)(e): Analysis and findings

As noted previously, the information at issue about unmarked police vehicles in the *Drive Clean* database relates to unmarked vehicles registered to law enforcement agencies. This information includes the make, model and year of the unmarked cars, their VINs, results for emissions tests as well as the identification number of the garage where each unmarked vehicle was tested under the *Drive Clean* program.

As outlined above, to establish that section 14(1)(e) applies, the Ministry and the affected parties must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure and that the reasons for resisting disclosure are not frivolous or exaggerated. In the circumstances of this appeal, portions of the representations submitted by the Ministry and the affected parties on this issue must remain confidential as they reveal information that would disclose law enforcement information otherwise protected by the *Act*. However, based on this confidential information, I am of the view that the Ministry and the affected parties have established a reasonable basis for believing that disclosure of the information about unmarked law enforcement vehicles contained in the *Drive Clean* database could reasonably be expected to

allow for the identification of unmarked police vehicles and, in turn, result in the endangerment of the life and/or safety of undercover police officers assigned to those vehicles and possibly other members of the general public.

The appellant focuses his representations on how the disclosure of the VIN would be unlikely to reveal the ownership of unmarked law enforcement vehicles. He bases his position on the fact that there are millions of test records contained in the *Drive Clean* database which makes it extremely difficult, if not impossible, to identify which VINs might belong to unmarked police vehicles. The appellant does not dispute that VINs can be linked back to the registered owner of the vehicle through the MTO vehicle registration database but he argues that to obtain the registered owner for each record contained in the *Drive Clean* database would cost millions of dollars. Further, he argues that to collate the available information in the *Drive Clean* database with registered owners from the MTO database, thus linking owners with specific vehicles and ultimately revealing which vehicles are unmarked police vehicles, would be an extremely lengthy and onerous task.

Although I accept the appellant's position that it would be an expensive, as well as a lengthy and onerous task to link the unmarked law enforcement vehicle information in the *Drive Clean* database with a specific unmarked vehicle, my review of the data elements at issue and the confidential representations of the police have persuaded me that disclosure of the VINs of unmarked law enforcement vehicles, in combination with the other data elements in the *Drive Clean* database, could be linked back to the police agency that owns those vehicles, thus identifying a vehicle and ultimately endangering the safety of an undercover police officer and potentially members of the general public.

The harm that could result from the identification of unmarked law enforcement vehicles is significant. Accordingly, I find that the position taken by the Ministry and the affected parties is not frivolous or exaggerated. I therefore find that the information at issue about unmarked law enforcement vehicles contained in the *Drive Clean* database is exempt from disclosure under section 14(1)(e).

As I have determined that disclosure of the information about unmarked law enforcement vehicles contained in the *Drive Clean* database is exempt under section 14(1)(e), it is not necessary for me to determine whether it is also exempt under section 14(1)(i) and (l).

Section 14(1)(c):

The Ministry also claims that that information related to covert vehicles used by the Ministry as part of the *Drive Clean* program are exempt from disclosure under the discretionary exemption in section 14(1)(c). That section reads:

14(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

In order to meet the “investigative technique or procedure” test, the institution must show that the disclosure of *Drive Clean* information related to covert vehicles could reasonably be expected to hinder or compromise the effective utilization of these vehicles as an investigative technique or procedure.

Representations

The Ministry’s representations on this issue are relatively brief. The Ministry states in its original representations:

As part of the Program’s Quality Assurance (QA/QC) component, the Program has covert vehicles pre-programmed with specific defects to test the accuracy and competence of the emissions testing, diagnostics and repairs done by the *Drive Clean* Facilities. The QA/QC component of the Program also prevents fraud by those who attempt to bypass compliance with the Standard Operating Procedures and Standard Administrative Procedures established for the Programs. Provision of VINs in the database would enable the identification of covert vehicles.

In its reply to the appellant’s representations, the Ministry added the following:

The Ministry respectfully reiterates and submits that anyone who is experienced in the nature of databases and the way that they can be manipulated is aware of the fact that a database can be sorted by any number of criteria, such as VIN. In such a situation, a sort by VINs will allow a manipulator of a database, such as the *Drive Clean* database, to identify particular VINs that have been tested frequently and match this result to *Drive Clean* test facilities. One outcome of this type of data manipulation of the *Drive Clean* database would be to identify categories of vehicles (*Drive Clean* covert vehicles) since these vehicles have had an anomalous number of emissions tests conducted at a variety of testing facilities.

The appellant’s representations on the application of the section 14(1)(c) exemption to *Drive Clean* covert or surveillance vehicles is summarized above in the discussion on the applicability of sections 14(1)(e), (i) and (l) to law enforcement information. In essence, the appellant submits that the disclosure of VINs would not reveal the identity of covert or surveillance vehicles used by the *Drive Clean* program. In his reply representations, the appellant states the following:

The ministry places a great deal more faith in the analytical power of databases than is warranted. Even with a large dataset, it is not possible to create information that does not exist. The database does not contain any information that identifies either police or *Drive Clean* surveillance vehicles.

It is certainly true that the database could be analyzed to identify vehicles that have been tested often. However, the ministry is wrong when it suggests that this would particularly identify *Drive Clean* surveillance vehicles. In fact, a great many vehicles are tested often. For example, some vehicles are “shopped around”

for a pass, taken from facility to facility in the hope of obtaining a pass. Vehicles that have changed hands often will have been tested more often than those that have enjoyed more stable ownership. These frequently-tested vehicles would far outnumber the *Drive Clean* surveillance vehicles. More than 13 million tests are in the database, while fewer than 2,000 undercover audits of any kind are performed each year.

Even if one purchased paper Ministry of Transportation vehicle abstracts at \$12 each, these would not reveal the ownership of *Drive Clean* surveillance vehicles because MTO obscures the ownership of these vehicles in its database by not using the real names. As well, *Drive Clean* has no choice but to limit the number of times a particular covert audit vehicle is re used because in time the identity of that vehicle will become known in the garage community. There is no reason to believe that *Drive Clean* covert vehicles are more likely to stand out than any other frequently tested vehicles. The covert vehicles would not be identifiable in the sea of repeatedly-tested vehicles, and even if one did order vehicle abstracts at the Ministry of Transportation, the real ownership would not be revealed, making the entire exercise a waste of time.

Analysis and findings

While I agree that the use of covert vehicles by the Drive Clean program is an investigative technique or procedure, the Ministry's representations have not persuaded me that the disclosure of these vehicles' VINs, or other information about them in the *Drive Clean* database, would reveal their identity. On this point, I find the appellant's representations persuasive.

The Ministry's sole contention on this point is that it would be possible to analyze the *Drive Clean* database to identify vehicles that were tested on numerous occasions. While this may be true, the Ministry does not go further and demonstrate how the identification of cars undergoing multiple tests would amount to an identification of *Drive Clean* covert vehicles. The appellant offers a number of plausible explanations for why vehicles might undergo multiple tests. The Ministry's representations offer no evidence on this point. Further, even if an individual was able to identify vehicles that have been tested numerous times, it is unlikely that the VIN of these vehicles, when matched with their MTO abstracts, would reveal their true ownership. This is confirmed in the Ministry's reply representations, where the Ministry makes the following point:

Clearly and unequivocally, the MTO has recognized that the identity of the owners of police and *Drive Clean* covert vehicles should not be identified.

I note that the three affected party police services provided information in their confidential representations that was persuasive to my finding that disclosure of *Drive Clean* information relating to police surveillance vehicles could endanger the life or physical safety of a law enforcement officer. The Ministry did not provide similar information in its representations that persuades me that disclosure of the VINs or other information in the *Drive Clean* database about covert test cars would reveal an investigative technique or procedure. Accordingly, I find that

the disclosure of information relating to covert vehicles used by the Ministry as part of the *Drive Clean* program is not exempt from disclosure under section 14(1)(c).

SEVERANCE:

In his representations, the appellant suggests a variety of ways in which the Ministry could sever the database to reduce the possibility of disclosing information found to be exempt.

Severance is discussed in section 10(2) of the *Act*. That section reads, in part, as follows:

- If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 12 to 22 . . . the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

The appellant submits:

Should you determine that the vehicle identification number does constitute personal information or that it could be used to identify police or Drive Clean Surveillance vehicles, the number can be severed to make it non-unique. For example, if the right most digit were severed, the remaining portion of the VIN could belong to any one of 100 vehicles. All database programs contain string functions which can be used to select only a portion of a string in a character field. In many programs, LEFT (VIN, 16) would select only the leftmost characters of a VIN, effectively stripping off the 17th character. This is not difficult to do and can be done in minutes.

Another way to sever the vehicles would be to use a method similar to that used by the Toronto Star and the Toronto Police Service when a police arrest database was released to that newspaper. It would be a simple matter to replace each unique VIN in the database with a unique number, so as to allow for the anonymous identification of individual vehicles while making it impossible to match the VIN with any outside information.

Finally, if there were concern about a particular group of vehicles, such as police surveillance vehicles, a list of these VINS could be supplied to the Ministry which could quickly delete the affected records from the database. Again, this would not be difficult and could be done in a short period of time.

The Ministry responds to the appellant's suggestions in reply representations:

The Ministry is opposed to all of the severance suggestions put forward by the Appellant.

The first idea of severing the VINs to truncated versions still leaves vehicles in identifiable groups and would force the Ministry to incur further software changes and costs which would be passed on to the Appellant. This would still cause problems of identifying *Drive Clean* Facilities at which Police vehicles get testing and could identify both police and *Drive Clean* covert vehicles by the unique emissions testing patterns in terms of the anomalous number of emissions tests conducted at a variety of testing facilities.

The second idea of giving each vehicle a unique identifier would still cause problems of identifying *Drive Clean* Facilities at which Police vehicles get testing and could identify both police and *Drive Clean* covert vehicles by the unique emissions testing patterns in terms of the anomalous number of emissions tests conducted at a variety of testing facilities.

Finally, deleting the police and the *Drive Clean* covert vehicles would alleviate great concerns of the Ministry; however, the private citizens of Ontario did not participate in the *Drive Clean* Program with the knowledge that their personal information would be made available to the general public. *Drive Clean* emissions test data was not collected for that purpose and that goes against the spirit of the *Freedom of Information and Protection of Privacy Act*.

Law enforcement agency #2 also responded to the appellant's severance suggestions:

While the severability of the VINs is suggested "not to be difficult", the possibility of data matching is still a probability. The appellant suggests "if there were a concern about a particular group of vehicles, such as police surveillance vehicles, a list of these VINS could be supplied to the Ministry which could quickly delete the affected records from the database. **The [named law enforcement agency] submit given the fact that the appellant is agreeable to the Police surveillance vehicles being deleted from the list, that this should no longer be an issue and the Police Surveillance Vehicles be removed from the scope of this appeal.** [Affected party's emphasis]

In sur-reply, the appellant responds:

I note that both the police service that replied and the Ministry have endorsed the severing of the test records for police and *Drive Clean* surveillance vehicles as a means to address their concerns about the identification of such vehicles. If you find that such vehicles could be identified but agree with me that personal information is not revealed, this would provide a simple solution.

As I have found that the Ministry and the affected parties have provided a reasonable basis for believing that the unmarked law enforcement vehicles could be identified through disclosure of *Drive Clean* data and ultimately that such disclosure could endanger the life and or safety of police officers and or members of the general public, I have ordered that all law enforcement information be severed from the *Drive Clean* database when disclosed to the appellant.

I have reviewed the parties' representations on the suggested modes of severance and have considered the possibility of severing distinct portions of the law enforcement information in the database such as portions of the VINs, the VINs in their entirety and/or the garage identifiers rather than all database information for unmarked law enforcement vehicles. However, in my view, severances made to some of the law enforcement data elements but not others would immediately reveal that the remaining information relates to an unmarked law enforcement vehicle. Accordingly, I find that by severing all of the law enforcement information the Ministry will be disclosing as much of the database as can reasonably be disclosed without revealing information that falls under section 14(1)(e).

ADDITIONAL MATTER

I recognize that the identification of surveillance vehicles by the Ministry and the affected party law enforcement agencies for the purposes of severing their data from the *Drive Clean* information being disclosed to the appellant may require more than the usual 30 days given for compliance with an order of this office. I will therefore allow the Ministry an additional 30 days to comply with the disclosure order that I will be making.

ORDER:

1. I order the Ministry to provide the appellant with an electronic copy of all data elements from the *Drive Clean* database previously disclosed to the appellant, and in addition, all vehicle identification numbers (VINs), with the exception of any information relating to unmarked law enforcement vehicles registered to law enforcement agencies, including make, model and year of unmarked vehicles, VINs, results of emissions tests and identification number of the garage performing the tests. This disclosure is to be made by the Ministry by **October 3, 2005** but not before **September 28, 2005**.
2. In order to verify compliance with this Order, I reserve the right to require the Ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to Provision 1.
3. I remain seized of this appeal in order to deal with any issues arising from this Order.

Original Signed by: _____
Brian Beamish
Assistant Commissioner

July 27, 2005