Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3217

Appeal PA12-138

Ministry of Transportation

June 17, 2013

Summary: The appellant submitted a request for access to certain personal information that had been withheld from a Motor Vehicle Accident Report. The request was initially made to the Ontario Provincial Police, who subsequently transferred it to the Ministry of Transportation. The ministry denied access to the information in question pursuant to the mandatory exemption at section 21(1) (personal privacy) of the *Act*. The appellant appealed this decision. During the processing of this appeal, the ministry advised the appellant that as an "authorized requester," it could obtain the information through the ministry's Authorized Requester Information Services. The appellant decided to pursue access pursuant to the *Act*, and relied on the factor favouring disclosure in section 21(2)(d) (fair determination of rights). The adjudicator found that although the appellant had established the relevance of the factor favouring disclosure in section 21(2)(d), the availability of the information through the "Authorized Requester Program" nullified any weight to be given to this factor, and upheld the ministry's decision to refuse access to the information pursuant to section 21(1).

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, 21(1)(f), 21(2)(d).

OVERVIEW:

[1] The appellant represents a company whose property was damaged as a result of a motor vehicle accident. For the purposes of this appeal, I will refer to both the company and its representative as the appellant.

[2] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ontario Provincial Police (the OPP) for access to the information that had been severed from the Motor Vehicle Accident Report (MVAR) which it had previously purchased from a particular OPP detachment. Specifically, the appellant sought access to the driver's address, owner's address and car's licence plate number, which had not been disclosed in the original information provided by the OPP.

[3] Pursuant to section 25(2) of the *Act*, the OPP transferred the request to the Ministry of Transportation (the ministry) because it had a greater interest in the requested record.

[4] The ministry issued a decision granting partial access to the MVAR.[1] The ministry withheld certain information pursuant to section 21(1) (personal privacy) of the *Act*.

[5] The appellant appealed the ministry's decision.

[6] During mediation, the appellant took the position that since the motor vehicle accident resulted in damage to its property, disclosure of the withheld information would not constitute an unjustified invasion of personal privacy under the *Act* as the information is relevant to a fair determination of rights affecting the person who made the request.[2]

[7] The ministry subsequently provided the appellant detailed information on an alternate process available to the appellant, through the ministry's Authorized Requester Information Services (ARIS). In this regard, the ministry identifies the appellant as "an indirect client" or "authorized requester" of the ministry and indicates that the request for information should have been made through the Insurance Services Bureau of Canada (ISB).

[8] The appellant indicated that it still wished to pursue access under the *Act* to the information pertaining to both the driver and vehicle owner's addresses and telephone numbers which have been severed from the record.

[9] No further mediation was possible, and the file was forwarded to the adjudication stage of the appeal process.

[10] I sought, and received representations from the ministry and the appellant. These representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*. Although the appellant did not wish to have the

[1] The copy of the MVAR that the ministry provided to the appellant is the same as that provided by the OPP.
[2] Section 21(2)(d).

affected parties notified at the mediation stage, I decided that administrative fairness requires that they be notified at the adjudication stage, and be given an opportunity to participate in this inquiry. The affected parties did not submit representations.

[11] In this decision, I find that the record contains only the personal information of the affected parties. I also find that the mandatory exemption at section 21(1) applies to the information. Although I find that the factor favouring disclosure in section 21(2)(d) is relevant, I give it no weight because this appellant has an alternate method available to it to obtain the requested information. Moreover, I find that the affected parties have a significant privacy interest in the non-disclosure of their names and addresses together.

RECORDS:

[12] The information remaining at issue consists of the severed portions of the Motor Vehicle Accident Report. Specifically, this information consists of the addresses of the vehicle's owner and driver and their respective telephone numbers.

ISSUES:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[13] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
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> (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,
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> (c) any identifying number, symbol or other particular assigned to the individual,
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> (d) the address, telephone number, fingerprints or blood type of the individual,
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> (e) the personal opinions or views of the individual except if they relate to another individual,
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> (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;

[14] 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.[3]

[15] 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.[4]

[16] 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.[5]

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[3] Order 11.
[4] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[5] Orders P-1409, R-980015, PO-2225 and MO-2344.

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[6]

[18] The ministry submits that the record at issue contains the personal information of the affected persons. The appellant takes no position on this issue.

[19] Having considered the record at issue, I find that the withheld portions constitute the personal information of the affected parties pursuant to section 2(1)(d) of the definition of personal information (the address and telephone number of the individual). I am satisfied that these individuals have been identified in their personal capacity. I also find that the record does not contain the personal information of any other individuals, including the appellant.

B. Does the mandatory exemption at section 21(1) apply to the information at issue?

[20] Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[21] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

[22] The appellant does not argue, and I find that none of the section 21(1)(a) to (e) exceptions applies in the circumstances. The appellant submits that the exception at section 21(1)(f) does not apply in the circumstances of this appeal.

[23] The section 21(1)(f) exception requires a consideration of additional parts of section 21. This section states:

> 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.

[24] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.[7]

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[6] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).
[7] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[25] The ministry does not claim that any of the presumptions in section 21(3) apply in the circumstances of this appeal. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[8]

[26] The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).[9]

[27] The ministry does not rely specifically on any of the factors in section 21(2). Rather, it provides a counter-approach to the position taken by the appellant, which I will discuss below.

[28] The appellant claims that the factor favouring disclosure of the information in the records found in section 21(2)(d) supports a finding that disclosure would not constitute an unjustified invasion of personal privacy. The appellant also argues that a number of the factors that favour privacy protection do not apply in the circumstances of this appeal. I will begin with a discussion of section 21(2)(d).

[29] Section 21(2)(d) states:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
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> > the personal information is relevant to a fair determination of rights affecting the person who made the request;

[30] For section 21(2)(d) to apply, the appellant must establish that:

1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

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[8] Order P-239.
[9] Order P-99.

4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.[10]

[31] The appellant submits that it meets each of the requirements referred to above, as follows:

- Its property was damaged in the accident described in the MVAR and, as a result, it has a legal right to pursue an action for damages;
- The appellant is contemplating seeking a determination of liability from the court;
- The addresses of the driver and owner of the vehicle have a bearing on, and are significant to, its right to damages;
- The addresses of the driver and owner of the vehicle are necessary in order to properly identify and serve them with the necessary documents for a court proceeding.

[32] The ministry takes the position that the section 21(2)(d) factor is not relevant in the circumstances because there is an alternative mode of access to the appellant through its "Authorized Requester" program (ARP). The ministry confirms that the appellant, "by way of an agreement with the Insurance Bureau of Canada, is an indirect client of the Ministry in the ARP." The ministry states that it provided the appellant with the name of a contact person with respect to the ARP.

[33] In the Notice of Inquiry that I sent to the parties, I included the following paragraphs:

> As I noted above, the ministry claims that an alternate access is available to the appellant. In addition, previous orders of this office have addressed the relevance of alternate disclosure mechanisms available to parties involved in a court action [see: Orders PO-1715, M-903 and MO-1245].
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> In addition, although previous orders have found that the disclosure of the name of an affected party was required in order for the appellant to be able to assert his/her legal right to a civil action, the affected party's home address was found to be exempt in most of these orders, as the appellant either did not require the address in order to serve a statement of claim,

[10] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

> or the address could be ascertained in another manner other than through a freedom of information request [see: Orders M-746 and M-1146.]
>
> The parties are asked to comment on the impact of alternate access to the relevance of section 21(2)(d) in the circumstances of this appeal.

[34] Before proceeding further with the parties' representations on this issue, it is helpful to understand the alternative access method referred to by the ministry.

What is the ARP?

[35] The ministry's website contains the following information about this program:

- The MTO records often include residential information of drivers or vehicle owners. This residential information is not considered part of a public record, and is Personal Information.

- Only "authorized" requesters who have been approved and have entered into a contractual agreement with the MTO may obtain residence address information for the purposes set out below (subject to the authorized use as set out in the AR agreement): [the list refers to a number of different activities, including 'service of documents/legal investigations – i.e. lawyers, process servers, private investigators, security guards and for locating persons for claims/ litigation/ accidents'.]

[36] In correspondence to the appellant that was provided to this office, the ministry explains that the appellant is an "Indirect Client" of the ministry, through an identified agreement and that it can obtain ARIS information through the Insurance Search Bureau of Canada (ISB) (which is the service provider). The ministry indicates further that service providers and indirect clients are both identified as ministry-approved authorized requesters and that they both proceed through the same application process to obtain information from the ministry.

[37] In this regard, the ministry states:

> The application process itself identifies the relationship of the client with [the ministry] (direct/indirect). The ISB's agreement permits the redistribution of [the ministry's] products to other ministry-approved clients (indirect clients/sub-clients).
>
> [The appellant] makes a request through the ISB… who in turn uses the ARIS link to request data from [the ministry].

[38] In other correspondence, the ministry indicates that the link to driver and vehicle information is restricted to specific individuals listed as "authorized users." The ministry notes that this is a security precaution to ensure that only authorized users can access the information. The ministry provided the appellant with contact information in order to assist it in making a request through ARIS.

Representations regarding the ARP

[39] The ministry reiterates its position that that appellant is an authorized requester. The ministry notes that the redacted MVAR provides sufficient information for the appellant to submit a request under the ARP for the withheld information. The ministry states further:

> ARP clients, including indirect clients, receive residential address information subject to terms and conditions which restrict the use and disclosure of this information. It is submitted that, if the appellant does in fact require address information to determine its rights in relation to the affected person, requiring the appellant to use the redacted MVAR to obtain the information through the ARP is the appropriate way to balance the privacy interest of the affected person with the appellant's interest in determining its rights.
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> Adopting this approach in the instant appeal would be consistent with the Ministry's general approach to the availability of residential address information from its databases. The ARP is the Ministry's way of balancing the legitimate need of many Ontario organizations for address information with the privacy interests of drivers and vehicles owners.

[40] The ministry notes that one of the permitted uses for the ARP is "[l]itigation/legal proceedings, including locating individuals for: service of process, affidavits, statements of claim, and inclusion of other court documents which themselves may become public records." The ministry concludes:

> It is submitted that, given the fact of the appellant's status as an indirect client in the ARP, and given the controls that are in place governing information provided under the ARP, any access granted to the appellant to address information should be by way of the ARP. It is further submitted that the availability of this avenue for access reduces or eliminates the weight that should be accorded to section 21(2)(d) in determining whether disclosure is an unjustifiable invasion of personal privacy.

[41] The appellant provides a number of arguments against accessing the driver and vehicle owners' addresses and telephone numbers through the ARP:

- The appellant submits that if disclosure of the personal information would "be breaching the privacy protection provisions of the *Act*," then providing the same information through the ARP would also be a breach of these provisions.

- Relying on an exchange of e-mails between the appellant and a team lead from ISB, the appellant contends that the information held by ISB is dependent on what the ministry provides it. The appellant indicates that there may be occasions where the ministry does not provide address information and submits, therefore, that there is no guarantee that the addresses will be available on a consistent basis through this alternate disclosure mechanism.

- The appellant relies on the reasoning in Order P-496, which found that the institution in that case could not rely on section 22(a) of the *Act* for records relating to a list of Limited Market Dealers and Securities Dealers, which could be obtained by subscription through a private company. In that appeal, the adjudicator found that the arrangement with the private company could lead to "inequitable access to information held by government." The appellant submits that the information available through the ARP is not available to everyone, which results in "inequitable access to information held by the Institution."

- The balance of convenience favours disclosure of the information through an access request. Relying on Orders P-729 and P-1316, the appellant submits that it is absurd that the ministry would withhold a small amount of information, while leaving other more sensitive information such as driver's date of birth accessible. The appellant submits that in these circumstances, it is inconvenient for the appellant to use alternate access methods. It also appears that the appellant believes that the ministry has approached the severance issue inconsistently.

[42] With respect to other methods of access, the appellant relies on Order M-1146, which found, in the unique circumstances of that case, that the address of the owner of a dog that bit the requester should be disclosed. It submits that where there is more than one person in the province with the same name, it might sue and serve the wrong individuals. Moreover, the appellant submits that "a statement of claim must include the name and address of the defendant in a lawsuit" and that in order to obtain a fair determination of rights, it requires this information.

[43] In addition, the appellant submits that sections 64(1) and (2) support its position that the addresses of the affected parties should be disclosed. These sections provide that the *Act* shall not impose any limitation on the information otherwise available by

law to a party to litigation; nor does it affect the power of a court or tribunal to compel a witness and/or the production of documents.

[44] The appellant acknowledges that it has been provided with the insurance company's name and the policy number, but submits that it is unreasonable to expect it to pursue only the insurance company for damages simply because it cannot access the driver and owner's addresses.

[45] Finally, the appellant makes additional arguments regarding section 22 of the *Act* despite the ministry's decision not to claim this exemption.

[46] In reply, the ministry addresses the arguments made by the appellant above. The ministry notes that the MVAR contains sufficient information, such as licence plate and driver licence number, which would enable the appellant to obtain the correct address through the ARP.

[47] Regarding the appellant's position that "the ARP does not give the Ministry the right to disclose residential address information, if it does not have the right to do so outside of the ARP", the ministry notes that it is the custodian of millions of residential addresses. It argues that if it was required to deal with every request for such information under the *Act*, the administrative burden on it would be unreasonable. As a result, the current method of providing information was developed:

> The current situation, under which residential address information was removed from publicly available driver and vehicle records in 1994, recognizes the relative sensitivity of this information, but also that many organizations, including that of the appellant, require it for purposes that are of public benefit. It is a compromise which provides for contractual protections for the handling of personal information by Authorized Requesters, including Ministry audit rights and restrictions on the use and disclosure of the information, and avoids the privacy risks associated with unrestricted access to address information and the administrative burdens and uncertainties of disclosing such information under the access provisions of the *Act*. This approach has been developed in consultation with the Commissioner's office (see IPC Practices No. 25 – "You and Your Personal Information at the Ministry of Transportation" and Privacy Investigation Report PC07-71.

[48] Referring to the appellant's submission that there is no guarantee that it will receive address information through the ARP, the ministry notes that it appears that there may be some miscommunication about what the ARP provides for. The ministry notes that the communications between the appellant and ISB refer to copies of an MVAR with severances made to it by the ministry or the police. The ministry states that in the appellant's case, it would be entitled to receive the plate abstract with address

and three-year driver record with the current address. The ministry notes that the MVAR is not available through the ARP. However, the information that would be provided through the ARP is obtained directly from the ministry's databases. The ministry states further:

> The ISB has access to address information on a consistent basis through the ARP in its capacity as a reseller of Ministry information. There is no such access through the ARP to MVARs. It appears from the email attached to the appellant's submissions that the ISB is referring to redacted MVARs obtained through channels entirely outside the ARP…
>
> …The addresses to which it has access are those which drivers and owners'/plate holders are obliged by law to supply to the Ministry…

[49] With respect to the appellant's section 22(a) submissions, the ministry points out that these arguments confuse the issue, and are not relevant. The ministry states:

> The Ministry is not saying the ARP promotes equal alternative access to Ministry information. It is saying that where the requester is also a client of the ARP, and where the information in dispute is available to it under the ARP, these facts should be considered in assessing whether disclosure of the information pursuant to an access request is an unjustified invasion of personal privacy.

[50] Regarding the comments made in Order P-496, the ministry reiterates that the ARP is not designed to give a broad alternative right of access to the general public, nor are the conditions of access set by a private sector entity. The ministry states that it administers the ARP and determines the conditions under which Authorized Requesters obtain access.

[51] Finally, the ministry submits that the balance of convenience is not a factor that should be considered in determining whether disclosure of personal information is an unjustifiable invasion of personal privacy.

Analysis and findings

[52] After reviewing the above submissions, I find that my decision turns on the availability of the information the appellant is seeking through the ARP, and I will focus the following discussion primarily on that issue.

[53] In Order M-1146, I considered whether the address of the owner of a dog should be disclosed to the appellant in circumstances where section 38(b)[11] had been claimed

[11] The municipal *Act* equivalent to section 49(b).

by the institution to withhold this information. In conducting my analysis, I discussed the privacy concerns relating to address information as follows:

> I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the Act is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).
>
> In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the Act.
>
> This is not to say that this kind of information should never be disclosed under the Act. However, *before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.*[12]

[54] In that order, I considered the application of section 14(2)(d)[13] as well as alternative methods for obtaining the information. In the unique circumstances of that appeal, I concluded that section 14(2)(d) was relevant and weighed heavily in favour of disclosure, despite the fact that there was an alternative access method potentially available to him. In this regard, I concluded:

> The appellant may have other means of obtaining the requested information, and address information generally should not be disclosed in the absence of cogent factors weighing in favour of disclosure. These factors weigh against the appellant's position.
>
> On the other hand, I have found that the section 14(2)(d) "fair determination of rights" factor weighs heavily in the appellant's favour.
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> *It should be remembered that the analysis of this issue is being conducted under section 38(b) of the Act which recognizes that individuals have a greater right to records which contain their own personal information.* As I indicated above, the onus is on the Health Unit and the dog owner to

[12] My emphasis.
[13] The municipal *Act* equivalent to section 21(2)(d).

> establish that disclosure of the dog owner's address **would** constitute an unjustified invasion of privacy.
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> In the circumstances, I find that the section 14(2)(d) factor outweighs the factors in favour of privacy protection. Therefore, I am not persuaded that disclosure of the dog owner's address to the appellant **would** constitute an unjustified invasion of personal privacy and the information. Accordingly, I find that the dog owner's address is not exempt under section 38(b).[14]

[55] In the circumstances of the current appeal, I am satisfied that the appellant has established all four parts of the section 21(2)(d) test. In particular, I accept the appellant's evidence which indicates that its property was damaged as a result of a motor vehicle accident and that it has a legal right to pursue an action for damages. Moreover, the appellant indicates that it is contemplating seeking a determination of liability from the court. Finally, I am satisfied that the addresses of the driver and owner of the vehicle have a bearing on, and are significant to, its right to damages. Accordingly, I find that the factor favouring disclosure in section 21(2)(d) is relevant.

[56] The degree of weight I give to this factor, however, turns on whether this appellant is able to access the personal information of another individual through an alternate method of access, which is specifically designed to provide the very information the appellant is seeking. An important preface to this discussion is that the analysis is being conducted under the mandatory exemption at section 21(1) rather than the discretionary exemption at section 49(b), because the record at issue does not contain the appellant's personal information.

[57] In Privacy Complaint Report PC07-71, Investigator Cathy Hamilton examined this alternate access program of the ministry. In that case, the issue was whether a university, which was an "authorized requester", failed to comply with the authorized requester agreement regarding information it received from the ministry by way of the ARP. In finding that the university had failed to comply, Investigator Hamilton reviewed the ministry's notice of collection, which refers to the ARP, as noted above, and made the following comments about the program and the importance of limiting access to personal information:

> The MTO's Authorized Requester Program was developed in consultation with the IPC to set out the parameters within which organizations/institutions can collect personal information from the MTO, and subsequently use and/or disclose that information. These parameters are clearly set out in Authorized Requester Agreements. Without the

[14] My emphasis.

> Authorized Requester Program, McMaster would not have been able to collect the complainant's personal information from the MTO.
>
> Furthermore, the term of the Authorized Requester Agreement that McMaster failed to comply with was the term that set out the type of information that McMaster could disclose to CBCL. Given that the *Act* deals with the collection, use and **disclosure** of personal information, compliance with this contractual term is relevant to an analysis of whether McMaster complied with the *Act*.
>
> To conclude that McMaster's non-compliance with the Authorized Requester Agreement was not a breach of the *Act* would diminish the importance of Authorized Requester Agreements and undermine the purpose and intent of the Authorized Requester Program. It would mean that institutions like McMaster could enter into Authorized Requester Programs and then disregard the terms of the Authorized Requester Agreement. This is unacceptable.
>
> Therefore, I conclude that McMaster, in breaching the terms of the Authorized Requester Agreement relating to permitted disclosure of personal information, was not in compliance with section 42(1)(c) of the *Act*.
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> Moreover, the IPC has previously provided comments to the MTO on the Authorized Requester Program. The Commissioner has called on the MTO to limit the scope of organizations that have access to the Authorized Requester Program and noted that she had been advocating this position for several years.
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> In particular, the Commissioner has stated that the Authorized Requester Program should be restricted to purposes related to licensing, registration and administration of drivers and vehicles; road and vehicle safety; litigation; law enforcement; and compliance with legislation. She noted that the use of personal information for unrelated purposes, such as debt collection or investigations by private investigators, should be revisited.
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> In fact, the Commissioner, in media interviews, has stated that it was "completely outrageous" that, for example, a parking lot operator could use a government database to hound a citizen over a parking ticket.

[58] In my view, the Investigator's comments are relevant to the issues in the current appeal. This Report reflects the importance of protecting personal privacy and is consistent with my discussion in Order M-1146 regarding the privacy interests associated with an individual's address. I am not persuaded that the ARP creates an

untenable situation vis-à-vis privacy protection as posited by the appellant. It is apparent that the ARP recognizes and balances the needs of certain requesters with the privacy interests of the drivers and owners of vehicles. The appellant in this appeal has been recognized as an authorized requester under this program.

[59] I do not find the appellant's arguments regarding the unreliability of accessing address information through the ARP to be persuasive. As the ministry notes, the e-mail discussion between the appellant and a staff member of the ISB appears to confuse the nature of the information being sought. It is apparent, from the representations and the ministry's website, that personal information, such as an address, is not available through a general access request for a MVAR or via any other method of access. The ministry has made it clear in its representations that the information that is accessible to an authorized requester through the ARP comes directly from its database. I am not persuaded that the ministry would arbitrarily decide not to provide access to this information if its disclosure was permitted by the authorized requester agreement.

[60] Much of the appellant's arguments relating to the ARP focus on section 22(a) of the *Act* which provides that a head may refuse to disclose a record where the record or the information contained in the record has been published or is currently available to the public. Orders P-729 and P-1316 refer to the "balance of convenience" in the context of an institution's decision to deny access to the information requested on the basis of section 22(a). The ministry has not relied on this exemption in the circumstances of this appeal because it has not made the information at issue available to the public. I find that any analogy to the reasoning in orders addressing section 22(a) to be misplaced, and I will not consider them further.

[61] With respect to the appellant's submissions regarding sections 64(1) and (2), in Order MO-2114, I considered the application of section 51(1) and (2)[15] as follows:

> This section of the *Act* has been considered in a number of previous orders (see, for example: Orders P-609, M-852, MO-1109, MO-1192 and MO-1449). In Order MO-1109, former Assistant Commissioner Tom Mitchinson commented on this section as follows:
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> > Accordingly, the rights of the parties to information available under the rules for litigation are not affected by any exemptions from disclosure to be found under the *Act*. Section 51(1) does not confer a right of access to information under the *Act* (Order M-852), nor does it operate as an exemption from disclosure under the *Act* (Order P-609).

[15] Sections 51(1) and (2) are the municipal *Act* equivalents of sections 64(1) and (2).

> Former Commissioner Sidney B. Linden held in Order 48 that the *Act* operates independently of the rules for court disclosure:
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> > This section [section 64(1) of the provincial *Freedom of Information and Protection of Privacy Act*, which is identical in wording to section 51(1) of the *Act*] makes no reference to the rules of court and, in my view, the existence of codified rules which govern the production of documents in other contexts does not necessarily imply that a different method of obtaining documents under the *Freedom of Information and Protection of Privacy Act, 1987* is unfair ...
>
> With respect to the obligations of an institution under the *Act*, the former Assistant Commissioner stated:
>
> > The obligations of an institution in responding to a request under the *Act* operate independently of any disclosure obligations in the context of litigation. When an institution receives a request under the *Act* for access to records which are in its custody or control, it must respond in accordance with its statutory obligations. The fact that an institution or a requester may be involved in litigation does not remove or reduce these obligations.
> >
> > The Police are an institution under the *Act*, and have both custody and control of records such as occurrence reports. Therefore, they are required to process requests and determine whether access should be granted, bearing in mind the stated principle that exemptions from the general right of access should be limited and specific. The fact that there may exist other means for the production of the same documents has no bearing on these statutory obligations.
>
> I agree with the above comments. In my view, the two schemes work independently. The fact that information may be obtainable through discovery or disclosure is not determinative of whether access should be granted under the *Act*.

[62] In my view, these comments are relevant to the issue in the current appeal. For the reasons cited above, I do not accept the appellant's contention that "sections 64(1)

and (2) support its position that the addresses of the affected parties should be disclosed."

[63] Essentially, when making an access request under the *Act*, the appellant sits in the same position as any other requester. It appears that because of the unique position that the appellant holds as an authorized requester, it would be able to access the information it requires in order to proceed with litigation through this alternate process. It is also important to keep in mind that disclosure under the *Act* is effectively, disclosure to the world, whereas the ARP is designed to provide the information that is necessary for the purposes intended while placing controls on the use and disclosure of the personal information that is provided through it to an authorized requester. In my view, the availability of an alternate method of access that is specifically designed to meet the needs of the appellant in asserting its legal rights nullifies any weight to be given to the factor in section 14(2)(d). Accordingly, I give the factor in section 14(2)(d) no weight in determining whether disclosure of the personal information in the record would or would not constitute an unjustified invasion of privacy in the circumstances of this appeal.

[64] The appellant has provided submissions on a number of the section 21(2) factors that favour privacy protection, arguing that they are not relevant in the circumstances of this appeal. However, it has not argued that any other factors favouring disclosure apply. Moreover, as I noted above, the disclosure of an individual's name and address together "may have serious consequences for an individual' s control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the Act." In my view, the privacy interests of the affected parties outweigh the appellant's interests in access to the information under the *Act*.

[65] Under section 21, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of personal privacy".

[66] Having found that the appellant is able to access the personal information in the record under the ARP, which nullifies the weight to be given to the factor in section 21(2)(d), I find that disclosure of the requested information pursuant to an access request would constitute an unjustified invasion of the affected parties' personal privacy under section 21(1), and the information is, therefore, exempt from disclosure.

ORDER:

I uphold the ministry's decision.

Original signed by: June 17, 2013
Laurel Cropley
Adjudicator