

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3250

Appeal PA12-420

Ministry of Community Safety and Correctional Services

September 4, 2013

Summary: An insurance company made a request for the date of birth, address and driver's license number of an individual charged with the theft of a motor vehicle. The ministry denied access to the information on the basis of the mandatory exemption in section 21(1) (personal privacy) of the *Act*. In this order, the adjudicator upholds the ministry's decision to deny access to the requested information under section 21(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1) and 21(3)(b).

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

OVERVIEW:

[1] This order addresses an access request submitted under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) by the representative of an insurance company. The request sought "the date of birth, current address and driver license number [of a named individual]" contained in a record created by the Ontario Provincial Police (OPP).

[2] The ministry issued a decision letter denying access to the information pursuant to the personal privacy exemption in section 21(1), together with the presumption against disclosure in section 21(3)(b) and the factor in section 21(2)(f) of the *Act*.

[3] The requester (now the appellant) appealed the ministry's decision to this office and a mediator was appointed to explore resolution. During mediation, the appellant provided the mediator with a copy of an OPP Occurrence Confirmation, which contained information respecting charges against the named individual, as well as other background information.¹ The appellant argued that the requested information is required to seek recovery from the named individual of the insurance payment made to the victim of the vehicle theft.

[4] The mediator discussed the exemptions claimed in the ministry's decision with the parties and referred them to relevant past orders. It was not possible to resolve the issues through mediation. Accordingly, the appeal was transferred to the adjudication stage of the appeals process, where a written inquiry was conducted.

[5] I commenced my inquiry by sending a Notice of Inquiry to the ministry, initially, seeking representations. Having received submissions from the ministry, I sent a modified Notice of Inquiry to the appellant, along with the relevant, non-confidential portions of the ministry's representations, inviting representations in response. I received correspondence from the appellant, along with supporting documentation.

[6] In this order, I uphold the ministry's decision to deny access under section 21(1).

RECORDS:

[7] At issue are portions of a one-page address query relating to the named individual.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*?
- B. Would disclosure result in "an unjustified invasion of privacy" under section 21(1) of the *Act*?

¹ In this "Occurrence Confirmation," dated March 11, 2011, two individuals are identified as being charged as a result of the vehicle theft; however, the appellant's access request relates to only one of the individuals.

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) of the Act?

[8] 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) of the *Act* and the relevant parts state:

"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, ...

(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;

[9] The ministry submits that the information being sought is "personal information within the meaning of the broad scope of the definition" in section 2(1) of the *Act*. The ministry adds that although addresses have been found in some past orders not to constitute personal information, that is not the case here since the addresses are linked to an identifiable individual and the charges laid against that person.

[10] The appellant's representations do not address whether the information in the record fits within the definition of personal information in section 2(1) of the *Act*.

[11] The date of birth, address(es) and driver's license number of the named individual qualify as that individual's personal information according to paragraphs (a), (b), (c), (d) and/or (h) of the definition in section 2(1) of the *Act*. Accordingly, I find

that the record contains the personal information of the named individual. I also find that the record does not contain any personal information about the appellant, which is an insurance company. As the record contains only the personal information of another individual other than the appellant, the relevant personal privacy exemption is the mandatory one in section 21(1). I will now review whether the personal information of the identified individual in the occurrence summary is exempt under the mandatory exemption in section 21(1).

B. Would disclosure result in “an unjustified invasion of privacy” under section 21(1) of the Act?

[12] Once it has been determined that a record contains the personal information of an individual other than the appellant, section 21(1) of the *Act* prohibits the disclosure of this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies.

[13] The only exception that could apply in the circumstances is section 21(1)(f), which provides that:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

[14] Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. In this appeal, the ministry relies on sections 21(3)(b) and 21(2)(f), while the appellant’s position that the information is required to pursue repayment by the named individual of the subrogated insurance claim suggests that section 21(2)(d) may be relevant. These parts of section 21 state, respectively:

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

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

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

[15] If any of the “presumptions against disclosure” in 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.² It has not been argued, and I find, that neither section 21(4) nor section 23 apply in the circumstances of this appeal.

Representations

[16] The ministry explains that the personal information sought by the appellant was withheld under section 21(3)(b) because:

... its disclosure would presumptively constitute an unjustified invasion of personal privacy, given that it was collected by the OPP in the course of a law enforcement investigation in relation to the OPP recovery of a motor vehicle where charges against the named individual were laid pursuant to the *Criminal Code*.

[17] The ministry also argues that the factor weighing against disclosure in section 21(2)(f) – highly sensitive personal information – is relevant due to the law enforcement context in which the record was created, particularly given that criminal charges were laid. The ministry mentions that the named individual was not notified of the request. The ministry also submits that the public would not expect personal information to be disclosed by a law enforcement agency “for a non-law enforcement related purpose, such as in the manner contemplated by this appeal.”

[18] With regard to the possible application of the factor in section 21(2)(d) (fair determination of rights), the ministry submits that it ought only to be reviewed if the presumption against disclosure is found *not* to apply. The ministry argues that section 21(2)(d) does not apply because the requested personal information can be obtained through other means, including a court order, particularly since the individual’s name is known to the appellant.

[19] The appellant’s representations do not specifically address the exemption claimed by the ministry to withhold the information at issue, as set out in the Notice of Inquiry, as well as in the ministry’s submissions. Instead, the appellant provided

² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

information related to its efforts to obtain the requested information,³ along with documentation regarding the funds paid to the vehicle owner to cover various expenses incurred as a result of the vehicle theft, including invoices and receipts. According to the appellant:

The appeal is necessary as we are attempting to obtain [the named individual's information] ... and all information pertaining to this incident. We have the subrogated right of recovery and therefore seeking 100% recovery from [the named individual], the responsible party.

[20] As indicated previously, this argument alludes to the possible relevance of the factor in section 21(2)(d).

Analysis and findings

[21] In view of the Divisional Court decision in *John Doe*, it is clear that once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2).⁴

[22] Based on the content of the record at issue and the circumstances of the appeal, it is clear that the personal information of the named individual was compiled by the police and is identifiable as part of an investigation of a possible violation of the law. Therefore, I find that this personal information fits within the ambit of the presumption in section 21(3)(b) and that its disclosure is presumed to result in an unjustified invasion of that individual's personal privacy.

[23] Having made that finding, and as the ministry correctly submits, it is not necessary for me to review the factors in sections 21(2)(d) or 21(2)(f). Accordingly, I find that the named individual's date of birth, driver's license number and address(es) are exempt under the mandatory exemption in section 21(1).

ORDER:

I uphold the ministry's decision to deny access to the information under section 21(1).

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ September 4, 2013

³ This information includes past correspondence with the OPP detachment, the ministry, and this office.

⁴ *John Doe*, cited above.