

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3418

Appeal PA13-492

Ministry of Transportation

November 3, 2014

**Summary:** The ministry received a request under the *Act* for information relating to six identified licence plates. After locating responsive records, the ministry granted the appellant partial access to them. The ministry advised the appellant that it denied him access to the locations at which the licence plates were issued, the names and addresses of the registrants of the identified licence plates and the owners of the vehicles with the identified licence plates under the personal privacy exemption in section 21(1) of the *Act*. The appellant claims that the ministry is required to disclose the information at issue under section 11 and raised the possible application of the public interest override in section 23. In this order, the adjudicator finds that the appellant may not claim the application of section 11 to the information at issue. The adjudicator finds that the locations in which the identified licence plates were issued does not constitute "personal information" and orders it to be disclosed. However, the adjudicator finds that the remaining information at issue represents the personal information of identifiable individuals and that its disclosure would result in an unjustified invasion of their personal privacy under section 21(1). Finally, the adjudicator finds that the public interest override in section 23 of the *Act* does not apply to the personal information found to be exempt under 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) ("personal information") and 21(1)

**Orders and Investigation Reports Considered:** Order 65, MO-2205

## **OVERVIEW:**

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

... in respect of the six (6) number plates depicted in the attached and dated photographs:

- (1) The date on which the number plates were issued in respect of the vehicle depicted;
- (2) The location of the [ministry], Service Ontario, or other office (whatever such office in name may actually have been), from which the number plates were issued in respect of the vehicle depicted; and
- (3) The following details in respect of the depicted number plates, on the dates on which their respective photographs were taken, including for each respective number plate,
  - (a) The name of the registrant of the number plate;
  - (b) The name of the owners of the vehicle, where otherwise in name than the registrant of its number plate;
  - (c) The address associated with the registrant of the number plate;
  - (d) Where the registrant of the number plate is an individual, the full name and address of the individual; and
  - (e) Where the owner of the vehicle is an individual, the full name and address of that individual.

[2] In his request, the requester advised that, with respect to parts 3(d) and 3(e), there are "compelling circumstances affecting the health or safety of an individual" as contemplated by section 21(1)(b) of the *Act*.

[3] In response to the request, the ministry issued a decision denying the requester access to the information requested, in full. With regards to parts 1, 3(a) and 3(b) of the request, the ministry advised the requester that the responsive information is denied under section 22(a) (information available to the public through other means) of the *Act*. The ministry directed the request to the appropriate department of the ministry to submit a request for a Vehicle Abstract – Plate Search.

[4] With regards to parts 2, 3(c), 3(d) and 3(e) of the request, the ministry advised the requester that the access to the location and address information requested is denied under section 21(1) of the *Act*. The ministry advised that the disclosure of this information would reveal something of the personal nature about the vehicle/plate owner and would constitute an unjustified invasion of personal privacy under section 21(1).

[5] The requester, now the appellant, appealed the ministry's decision to this office. In his appeal, the appellant claimed that the ministry failed to properly consider the following:

- (a) The ministry's obligation to disclose the records under section 11(1) (obligation to disclose);
- (b) Section 21(1)(b) to the extent that the institution relies on this section;
- (c) Sections 21(2), (3) and (4); and
- (d) Section 23 (public interest override).

[6] During mediation, the appellant confirmed his position that the ministry is obligated to disclose the records under section 11(1) and continues to seek access to the information withheld under section 21(1).

[7] The ministry advised that while it would disclose the information at issue if the owners of the vehicles or the registrants of the licence plates were companies, it confirmed its decision to withhold the information at issue under section 21(1) because it is related to individual owners who are natural persons, not companies.

[8] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by inviting the appellant to make representations in response to the issues raised in a Notice of Inquiry. The appellant submitted representations.

[9] In this order, I find that the appellant may not raise the application of section 11 to the information at issue. I find that the locations of the ministry, Service Ontario or other office where the identified licence plates were issued do not constitute "personal information", as that term is defined in section 2(1) of the *Act*. However, I find that the remaining information at issue consists of "personal information" of identifiable individuals. I uphold the ministry's decision to withhold this information from the appellant under the personal privacy exemption in section 21(1) of the *Act* as its disclosure would result in an unjustified invasion of their personal privacy.

## **RECORDS:**

[10] The information at issue consists of the names and addresses of the registrants of the identified licence plates and the names and addresses of the owners of the vehicles with the identified licence plates. The information at issue also includes the locations of the ministry, Service Ontario or other office where the identified licence plates were issued.

## **ISSUES:**

- A. Can the appellant raise the application of section 11 to the information at issue?
- B. Does the information at issue contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory exemption at section 21(1) apply to the information at issue?
- D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purposes of the section 21(1) exemption?

## **DISCUSSION:**

### **A. Can the appellant raise the application of section 11 to the information at issue?**

[11] In his representations, the appellant submits that the release of the requested information is mandatory under section 11 of the *Act*. Section 11(1) of the *Act* states:

Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or person affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or public safety to the public.

[12] The appellant submits that the licence plates at issue in his request were defaced, altered or obscured. The appellant states that Ontario's *Highway Traffic Act* requires individuals to ensure that every licence plate be kept free from dirt and obstruction and that the entire plate, including the numbers, is plainly visible to all.<sup>1</sup>

[13] During mediation, the mediator identified a number of orders that address section 11 of the *Act* and its municipal equivalent, section 5 of the *Municipal Freedom of Information and Protection of Privacy Act*. In one of the orders referred to, Order MO-2205, Adjudicator Diane Smith found as follows:

Section 5(1) [of the municipal *Act*] is a mandatory provision which requires the head to disclose records in certain circumstances. Former Commissioner Sidney B. Linden in Order 65 found that the duties and responsibilities set out in section 11 of the provincial *Act* (section 5 of the municipal *Act*) belong to the head alone. I concur with former Commissioner Linden's interpretation and adopt it in this appeal. As a result, it is my view that I do not have the power to make an order pursuant to section 5(1) of the *Act*.

[14] I adopt the analysis above and find that I do not have the power to make an order pursuant to section 11(1) of the *Act*. As former Commissioner Linden stated in Order 65, "making submissions on the applicability of this section of the *Act* is... not something that can be delegated to a third party to speak to" and it is for the ministry, alone, to claim and make submissions on the application of section 11(1).

[15] Therefore, although the appellant has raised a number of concerns regarding the licence plates identified in his request, I find that he cannot raise the application of section 11 to the information at issue.

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

[16] 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,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

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<sup>1</sup> *Highway Traffic Act*, R.S.O. 1990, c. H.8, s. 13(2).

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[17] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>2</sup>

[18] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>3</sup>

[19] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>4</sup>

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<sup>2</sup> Order 11

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

[21] The appellant did not make submissions on whether the information at issue contains the "personal information" of identifiable individuals, as that term is defined in section 2(1) of the *Act*.

[22] The information at issue includes the locations at which the identified licence plates were issued. I find that this information does not constitute the "personal information" of identifiable individuals as that term is defined in section 2(1) of the *Act*. The disclosure of the addresses of the offices from which the identified licence plates were issued would not reveal something of a personal nature about any identified individuals. Rather, they simply reveal which ministry location issued the licence plate. Therefore, I find that the locations of the offices from which the identified licence plates were issued does not constitute "personal information". As the ministry did not claim any exemption other than the personal privacy exemption in section 21(1) to withhold this information, I order the ministry to disclose it to the appellant.

[23] The remaining information at issue consists of the names and addresses of the registrants of the identified licence plates and the names and addresses of the owners of the vehicles with the identified licence plates. I find that this information represents the "personal information" of identifiable individuals as it includes these individuals addresses (paragraph (d)) and their names where they appear with other personal information relating to them (paragraph (h)). The information at issue does not contain the appellant's personal information. As I have found that this information qualifies as the personal information of identifiable individuals, I will now consider whether this information is exempt under section 21(1) of the *Act*.

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

[24] Where a requester seeks personal information of other individuals, 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.

[25] In his appeal letter, the appellant raised the possible application of the exception in section 21(1)(b), which reads as follows:

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

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<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

in compelling circumstances affected the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[26] The appellant did not make representations on the application of this exception to the information at issue. In the absence of representations on this exception and upon my own review of all of the circumstances of this appeal, I find that section 21(1)(b) does not apply to the information at issue.

[27] Further, it appears that the only exception that could apply is section 21(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy. Section 21(1)(f) reads:

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.

[28] In order to establish that section 21(1)(f) applies, it must be shown that the disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.<sup>6</sup>

[29] Sections 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) of the *Act* refers to certain types of information the disclosure of which does not constitute an unjustified invasion of privacy.

[30] The appellant did not make any submissions on the application of section 21(1) to the information at issue. In the absence of representations from the appellant, I find that he has not demonstrated that any of the considerations favouring disclosure in section 21(2), listed or otherwise, are relevant in the circumstances of this appeal.

[31] As identified above, in order to establish that the exception in section 21(1)(f) applies to the information at issue, the appellant must show that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. Since no factors favouring the release of the personal information of identified

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<sup>6</sup> See, for example, Order MO-1212.



individuals apply, I find that disclosure of the record would constitute an unjustified invasion of the personal privacy of the registrants of the identified licence plates and the owners of the vehicles with the identified licence plates. Therefore, the record is exempt under section 21(1) of the *Act*.

**D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purposes of the section 21(1) exemption?**

[32] Section 23 states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[33] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[34] The *Act* is silent as to who bears the burden of proof in respect of section 23. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 23 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.<sup>7</sup>

[35] In his representations, the appellant submits that there is a public interest in the disclosure of the information at issue. The appellant refers to sections 12 and 13 of the Ontario *Highway Traffic Act*<sup>8</sup>, which require that every licence or number plate on vehicles be kept free from dirt and obstruction and hold that every person who defaces or alters a licence plate or used a defaced or altered plate is guilty of an offence. The appellant submits that these offences demonstrate that the legislature identified a public interest in the proper identification of the owners and drivers of vehicles.

[36] The appellant states that "pedestrians and drivers of other vehicles are inherently vulnerable to the threat of serious physical injury or death occasioned by moving vehicles operating on public highways". As such, the appellant submits that "the reasonable ability for the public to identify owners and drivers of vehicles on their public highways is therefore a matter of public interest, the hindrance of which poses a grave safety hazard to them".

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<sup>7</sup> Order P-244.

<sup>8</sup> *Supra* note 1.

[37] In addition, the appellant submits that “public safety ought not to yield to protection of personal privacy from identification of motorists who contravene the law in situations of reasonably foreseeable harm, particularly where such harm is grave”.

### **Compelling public interest**

[38] Based on my review of the appellant’s representations, I am not satisfied that there is a compelling public interest in the disclosure of the information that remains at issue. In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government.<sup>9</sup> Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.<sup>10</sup>

[39] Considering the information that remains at issue, which consists of the names and addresses of individual registrants of identified licence plates and owners of the vehicles with the identified licence plates, I am not satisfied that its disclosure would serve the purpose of informing the citizenry about the activities of their government. Further, the appellant has not provided me with sufficient evidence to demonstrate that the disclosure of the information remaining at issue would add in some way to the information the public has to make effective use of the means of expressing public opinion or make political choices.

[40] Accordingly, I find that the public interest override in section 23 of the *Act* has not been established and I dismiss this aspect of the appeal.

### **ORDER:**

1. I order the ministry to disclose the locations of the ministry, Service Ontario or other office where the identified licence plates were issued to the appellant by **December 2, 2014**.
2. I uphold the ministry’s decision to withhold the remaining information at issue under section 21(1) of the *Act*.

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<sup>9</sup> Orders P-984 and PO-2607.

<sup>10</sup> Orders P-984 and PO-2556.

3. In order to verify compliance with provision 1, I reserve the right to require the ministry to provide me with a copy of the information disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ November 3, 2014