

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3690

Appeal PA15-547

Ministry of Transportation

January 26, 2017

Summary: The ministry received a request for the driver's license information of a named person, including the former address history of that person. The ministry denied access to the information on the basis of the personal privacy exemption in section 21(1). This order confirms that the information is 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) and 21(1).

Orders and Investigation Reports Considered: Orders P-312, P-1681, M-1053, PO-1736, PO-1764, PO-2198, PO-2271, PO-2590-R and PO-3054.

OVERVIEW:

[1] The Ministry of Transportation (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the driver's license information of a named person. The request was worded as follows:

We are requesting a search of driver's license records for a current address for [a named individual] under ... [the *Act*].

If you are unable to locate a current address for [the named individual], we'd appreciate any information that might help us locate him, including former addresses.

[2] The ministry located the driver's license history of the named person and issued a decision to the requester to deny access to the record pursuant to section 21(1) (personal privacy) of the *Act*.

[3] The requester appealed the ministry's decision to this office.

[4] During mediation, the appellant explained that it is acting on behalf of the Public Guardian and Trustee of Saskatchewan (the public trustee) who is trying to locate the named individual (the affected party), whose mother died in 2013. The appellant explained that the public trustee is the administrator of the mother's estate and that the affected party has not yet been informed of his mother's death or estate. The appellant also explained that the public trustee received information that indicates the affected party is in Ontario and as a result, she is seeking the driver's license information to assist her in locating him.

[5] The appellant initially raised the possible application of section 42(1) of the *Act*, but during mediation decided not to pursue this issue. Also during mediation, the mediator attempted to seek consent from the affected party using the information in the records. The mediator did not hear back from the affected party and was therefore unable to obtain consent.

[6] Mediation did not resolve the appeal, and it was transferred to the inquiry stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. I sought and received representations from the ministry and the appellant,¹ and shared these in accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*.

[7] In this order and for the reasons outlined below, I uphold the ministry's decision to deny access to the requested information pursuant to section 21(1).

RECORDS:

[8] The information remaining at issue in this appeal is the affected party's address history located in a Driver's Abstract.

ISSUES:

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

¹ This office was not able to contact the affected party during the processing of this appeal.

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

DISCUSSION:

A. Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[9] The ministry takes the position that the address information of the affected party contained in the record is this individual’s personal information. In her representations the appellant acknowledges that the information that is being sought is the personal information of the affected party.

[10] Section 2(1) of the *Act* defines “personal information” as including the following:

“personal information” means recorded information about an identifiable individual, including,

- (d) the address, telephone number, fingerprints or blood type of the individual [...]

[11] The information at issue consists of the affected party’s address information as recorded in driver’s license records held by the ministry, and clearly falls within the definition of personal information in section 2(1) of the *Act*.

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

[12] Where a requester seeks the personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing it, except in the circumstances listed in section 21(1)(a) to (f). If the information fits within any of paragraphs (a) to (f), it is not exempt from disclosure under section 21.

[13] In the circumstances, 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.

[14] The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f). None of the considerations in section 21(4) nor the presumptions in section 21(3) have been raised by the parties, and I find that they are not relevant in the circumstances. I will therefore review the various section 21(2) factors that might apply in the circumstances of this appeal.

Representations

The ministry's representations

[15] The ministry submits that it treats residential address information as sensitive and restricts access to such information to those who have entered into an "Authorized Requester Agreement" with the ministry. Individuals and organizations who have entered into such an agreement agree to strict conditions on the disclosure, use and secure disposal of information as set out in the agreement.

[16] The ministry also refers to the public notice it provides regarding its collection of personal information, which advises members of the public that it collects personal information such as residential addresses, pursuant to its authority under section 205 of the *Highway Traffic Act*. The notice informs the public that residential address information is not part of the publicly available record, and lists the purposes for which address information may be made available to Authorized Requesters.

[17] In addition, the ministry notes that the personal information contained in the record is likely inaccurate and unreliable, as the ministry was advised of the affected party's last address 13 years ago. The ministry submits that the fact that the mediator did not hear back from the affected party lends support to the position that the information is inaccurate.

The appellant's representations

[18] The appellant submits that it is a forensic genealogical research firm that is acting on behalf of the Public Guardian and Trustee of Saskatchewan, which is authorized to administer the deceased person's estate pursuant to *The Public Guardian and Trustee Act* of Saskatchewan. The appellant states that the public trustee requested its assistance in locating the beneficiary of the estate and, pursuant to a written authorization, it is now acting as the public trustee's agent.

[19] The appellant also states that, in order to discharge its responsibility to use reasonable efforts to locate the beneficiaries of the estate it is administering, in addition to its request to the ministry, it made requests to other governments' departments and agencies to assist in the search. The appellant submits that disclosure of the requested information would benefit both the individual to whom the information relates and the Government of Saskatchewan, which has a legal obligation to administer the estate.

[20] The appellant also submits that the affected party provided the address information to the ministry so that the government could contact the individual at that address should the need arise. The appellant argues that the purposes for which the information may be used extend beyond renewing a driver's license or vehicle insurance, to include use by police and other agencies to contact the individual upon traffic violations, accident reports, and witness statements. The appellant submits that the address is not highly sensitive, and is used to maintain safe roadways and good

governance.

[21] The appellant also refers to the factor in section 21(2)(d) of the *Act*, which provides that disclosure of personal information will not be an unjustified invasion of personal privacy if the personal information is relevant to a fair determination of rights affecting the person who made the request. The appellant submits that the ministry has not considered that its request is related to the requirement to fulfil legal obligations in Saskatchewan to administer the will of a deceased individual. The appellant submits that the information requested has a bearing on the successful outcome of a court order as it will assist with the administration of an estate in a timely fashion. The appellant suggests that without the requested information, it is possible that the affected party may not obtain their legacy in their lifetime.

[22] With regard to the ministry's Authorized Requester program, the appellant notes that one of the purposes of the program is, "for use by lawyers, process servers, bailiffs and private investigators for legal purposes related to the justice system including [...]". The appellant submits that the public trustee (for which it is acting as an agent) has lawyers that work in the estates department. The appellant also submits that it is working with a Trust Officer on behalf of the Government of Saskatchewan under the authority of the Minister of Justice and Attorney General of Saskatchewan. On this basis, the appellant argues that its purpose in requesting the information at issue falls within the "for use by lawyers [...]" clause. The appellant also notes that by using the word "including," that clause is not exhaustive in its definition. The appellant submits that if the ministry allows a provincial government access to address information for the purpose of collecting debts, then it is unreasonable to deny disclosure of the same information to a provincial government to discharge its legal duty to distribute funds or assets from an estate.

[23] The appellant also submits that individuals would likely prefer that the ministry not disclose their address information to authorized users for the purpose of collecting debts, but that this can be one of the purposes for which information is disclosed under the Authorized Requester program.

[24] The appellant states that, in its experience, individuals are very willing to allow access to their contact information when it enables them to receive funds/assets from an estate and to be informed of their relative's death. In this respect, the appellant submits that disclosure of the information at issue is in the third party's best interest.

[25] With regard to the ministry's position that the information is likely inaccurate and unreliable, the appellant submits that such information would nonetheless be useful. The appellant states that relatives of the affected party reported that he was in Ontario, but could not advise as to which part of the province he may be in. Given his common name, the appellant could only distinguish the affected party by date of birth and therefore required the assistance of governments, which would possess date of birth information (as opposed to, for example, telephone book listings). The appellant

suggests that even an out-of-date address would give it a starting point for its search.

[26] Finally, the appellant submits that it routinely receives driver's license information, including old addresses, from other provinces, and that it has received protected information from other Ontario agencies and ministries.

Analysis and findings on the factors in section 21(2)

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

[28] With respect to the listed factors in section 21(2), the ministry takes the position that the factors in sections 21(2)(f) and (g) are relevant. The appellant submits that the factor in section 21(2)(d) is relevant. These sections read:

(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;

(g) the personal information is unlikely to be accurate or reliable.

[29] In addition, the appellant submits that disclosure of the address history is in the affected party's best interests as it will allow him to receive funds and/or assets from an estate and to be informed of his relative's death. The ministry discusses the process by which parties can enter an "Authorized Requester Agreement" with the ministry and thereby obtain information in certain circumstances. I will also consider both of these as "additional factors" in this appeal.

Section 21(2)(g): inaccurate or unreliable information

[30] The ministry submits that the personal information contained in the record is likely inaccurate and unreliable, as it was advised of the affected party's last address 13 years ago. In response, the appellant submits that such information would nonetheless be useful, as it would provide a starting point for its search in locating the affected party.

[31] This factor is intended to weigh against disclosure where the information is unlikely to be accurate or reliable, leading to potentially negative consequences for the

subject.² Although the address information in the record is 13 years old and is not likely to be the *current* address information of the affected party, I am not satisfied that it is inaccurate historic information about the affected party's former address. The appellant's stated interest in this information to provide her with a "starting point" for locating the affected party confirms her interest in this historic information. In the circumstances, I find that this information is not inaccurate and unreliable historic address information, and I find that the factor in section 21(2)(g) does not apply.

Section 21(2)(f): highly sensitive

[32] The ministry submits that it treats residential address information as sensitive and restricts access to such information to those who have entered into an Authorized Requester Agreement with the ministry. The ministry submits that the public expects address information to be treated as highly sensitive when it provides it to the ministry, and refers to the information provided in its Public Notice on collection of personal information in support of this position. The appellant submits that its purpose for requesting the information at issue fits within the reasons for which highly sensitive personal information would be disclosed pursuant to the ministry's Authorized Requester program. It also submits that disclosure of the address history is in the affected party's best interests as it will allow him to receive funds/assets from an estate and to be informed of his relative's death.

[33] This office has consistently held that for personal information to be considered highly sensitive, it must be found that its disclosure would reasonably be expected to cause excessive personal distress to the subject individuals.³ This office has also held that general information, such as address information, is not "highly sensitive."⁴

[34] In the circumstances, I find that the address information at issue, which is likely only historic address information, is not "highly sensitive" as disclosure of this information could not reasonably be expected to result in significant personal distress to the affected party. Accordingly, I find this factor does not apply.

Section 21(2)(d): fair determination of rights

[35] This factor favouring disclosure applies if the personal information is relevant to a fair determination of rights affecting the person who made the request. Previous orders have stated that in order for section 21(2)(d) apply, the appellant must establish that:

² See Order PO-2271.

³ See, for example, Orders M-1053, P-1681 and PO-1736.

⁴ See Order PO-3054.

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
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.⁵

[36] In my view there is a question regarding whether disclosure of the information is relevant to a fair determination of rights *affecting the person who made the request*. The appellant made the request on behalf of the Saskatchewan Public Trustee which is administering the estate on behalf of a deceased individual. Although it is clear that the appellant is interested in accessing the information to assist in administering the deceased's estate, it is unclear to me that this interest relates to a fair determination of rights affecting the person who made the request. In fact, the appellant's representations suggest that it is the affected party's "rights" to possibly obtain their legacy that are affected.

[37] In any event, I am not satisfied that the four-part test set out above has been established. Although the appellant submits that its request is related to the requirement to fulfil legal obligations in Saskatchewan to administer the will of a deceased individual, the appellant has not referred to a specific legal right or an existing or contemplated proceeding, as required for the purpose of part two of the test. Furthermore, I am not satisfied that the personal information is required for the purpose of part four of the test. I note that the ministry has denied access to the information at issue on the basis that the appellant is not an Authorized Requester. Although I have no information about whether the appellant has applied to access the information through this program, the existence of this program and the possibility that the appellant may otherwise be able to access the information through the Authorized Requester program speaks to this issue.⁶ In the circumstances, I am not satisfied that the personal information is required to be disclosed through this appeal for the purposes of part four of the test.

[38] Accordingly, I find that section 21(2)(d) is not a factor favouring disclosure in this appeal.

⁵ See 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.)

⁶ See order PO-3217.

Unlisted factors

Disclosure is in the best interests of the individual whose personal information is sought

[39] The appellant suggests that without the requested information, the affected party may not obtain their legacy in their lifetime. The appellant also states that, in its experience, individuals are very willing to allow access to their contact information when it enables them to receive funds/assets from an estate and to be informed of their relative's death. In this sense, the appellant submits that disclosure of the information at issue is in the third party's best interest.

[40] Previous orders have found that an unlisted factor favouring disclosure is whether there is a possible "benefit to unknown heirs" in the disclosure of the personal information.⁷ In this appeal, the appellant argues that there is a benefit to a known heir, and that the disclosure of that individual's personal information to the appellant will result in a benefit to him.

[41] I accept that in circumstances where disclosure of the personal information of a party would be in the best interests of that individual, this is an unlisted factor favouring disclosure.

[42] In this appeal the appellant states that the affected party may be entitled to obtain a legacy, receive funds and/or assets from an estate, and be informed of their relative's death. Other than these broad statements, I have no details regarding the possible amount of the legacy and/or estate; however, in the circumstances, I accept that this unlisted factor favours disclosure, and give it moderate weight.

Existence of the ministry's Authorized Requester program

[43] The ministry has provided representations stating that it restricts access to address information to those who have entered into an "Authorized Requester Agreement" with the ministry. Individuals and organizations who have entered into such an agreement agree to strict conditions on the disclosure, use and secure disposal of information that is set out in the agreement.

[44] The ministry cites its "Collection of Personal Information – Public Notice", which advises members of the public that it collects personal information, such as residential addresses, pursuant to its authority under section 205 of the *Highway Traffic Act*. The notice informs the public that residential address information is not part of the publicly available record, and lists the purposes for which address information may be made available to Authorized Requesters. Such purposes include use by lawyers and others for legal purposes related to the justice system, collection of debts resulting from failure to pay amounts owing to the provincial government, and verification of information by

⁷ See orders PO-2198 and PO-2590-R.

financial institutions. The ministry provided the following information about the Authorized Requester program and the notice given to individuals whose personal information is collected by the ministry:

The ministry's notice of collection advises members of the public that residential address information is not part of the publicly available record and lists the purposes for which address information may be made available to Authorized Requesters. The notice of collection reads, in part, as follows:

Collection of Personal Information - Public Notice

Personal information is collected on behalf of the Ministry of Transportation under the authority of section 205 of the *Highway Traffic Act*. The information is used for the administration of the Ministry's driver, vehicle and carrier programs.

Residential address information collected is not available to the general public. Only "Authorized Requesters" who have been approved and have entered into a contractual agreement with the Ministry may obtain residential address information for the purposes set out below:

[45] The ministry then sets out the listed purposes through which parties can become "Authorized Requesters." Although the list set out in the representations does not specifically include the use for which the appellant is requesting the information, I note that the current information available on the ministry's public website includes the following as one of the purposes by which a party can obtain address information through its Authorized Requester program:

Public Interest – e.g. compassionate circumstances to facilitate contacting next of kin individual who is in crisis, injured, ill or deceased, with confirmation by police or doctor

[46] In their representations both parties provide information regarding whether or not the appellant would be able to become an Authorized Requester under the ministry's program. As noted above, I have no information regarding whether the appellant applied to become an Authorized Requester under this program, or the results of any such application.

[47] It is clear that the ministry has established a process through which parties seeking information from its database can apply to access that information for specific purposes. This process also requires parties to agree to restrictions on their use of the information, and the public is clearly informed of these considerations. The ministry has determined that the information in its database should be available to certain categories of requesters, but has established strict processes for these requesters to follow if they

wish to access the information.

[48] I find that the public notice advising that only Authorized Requesters will be able to access the database, and the existence of this option for parties seeking the information in the database for a wide variety of uses (including both for the benefit and the detriment of the party whose information is sought, and in the public interest) is an unlisted factor favouring non-disclosure of information in the database to parties who are not "Authorized Requesters" but who may otherwise be able to access the information through the Authorized Requester program. Without any information about whether the appellant has applied to become an Authorized Requester, I find that the existence of this program is a factor favouring non-disclosure in the circumstances of this appeal, and I give it significant weight.

Balancing the factors

[49] I found that the existence of the ministry's Authorized Requester program is an unlisted factor favouring non-disclosure, and gave this factor significant weight. I also found that an unlisted factor favouring disclosure is that the disclosure is in the best interests of the individual whose personal information is sought, and gave this moderate weight. Balancing the factors to determine whether the disclosure of the address information would result in an unjustified invasion of privacy, I find that the consideration favouring non-disclosure outweighs the factor favouring disclosure of this information.

[50] Accordingly, I find that disclosure of the information would constitute an unjustified invasion of the privacy of the affected party, and that the information qualifies for exemption under the mandatory exemption in section 21(1).

ORDER:

I uphold the ministry's decision to deny access to the information at issue.

Original Signed by: _____
Frank DeVries
Senior Adjudicator

January 26, 2017