

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3797

Appeal PA16-400

Ministry of Community Safety and Correctional Services

December 19, 2017

Summary: The appellant made a request to the Ministry of Community Safety and Correctional Services (the ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to an Ontario Provincial Police (OPP) report pertaining to a motor vehicle accident involving one of the appellant's vehicles. The ministry provided partial access to the information at issue, citing the personal privacy exemption at section 21(1) of the *Act* to deny access to two witness statements. The appellant appealed, following which the two witnesses consented to the release of their information. The adjudicator finds that the exception at section 21(1)(a) (consent) applies and that the section 21(1) exemption does not apply. She orders the ministry to disclose the statements to the appellant.

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) and 21(1)(a).

BACKGROUND:

[1] The appellant, a corporation, made a request to the Ministry of Community Safety and Correctional Services (the ministry) pursuant to the *Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for access to an Ontario Provincial Police (OPP) report pertaining to a motor vehicle accident involving one of the company's vehicles.

[2] The ministry issued a decision granting partial access to the records. As part of the disclosure, full access was provided to the driver's statement, as the driver had

provided the ministry with consent to release the entire police report, including all witness statements. Access to other information was denied, with the ministry relying on the personal privacy exemption at section 49(b) of the *Act*, as well as section 21(3). Some information, including police codes, was also withheld on the basis that it was not responsive to the request.

[3] The appellant appealed the ministry's decision to this office, seeking access to all of the withheld information with the exception of the information that the police had found to be non-responsive. The appellant's representative advised the mediator that he was seeking access to the statements of the individuals who had provided statements to the police, and requested that the mediator contact these individuals in order to obtain their consent to disclose this information.

[4] The mediator notified the five individuals (other than the driver) who had provided statements to the OPP (the affected parties). One of the affected parties provided full consent to the disclosure of the information pertaining to him, two provided consent to partial disclosure, and two did not provide consent to the disclosure of their information to the appellant. The ministry then issued a revised decision granting access to additional information, relying on the personal privacy exemption at section 21(1) to deny access to the withheld information.¹

[5] The appellant's representative stated that he wishes to pursue access to the two remaining witness statements of the affected parties who had not provided their consent. The appellant's representative advised the mediator that he was only interested in the statements themselves, and that he was not pursuing access to the names, addresses, dates of birth, telephone numbers, driver's licence numbers or signatures of the affected parties. This information is therefore no longer at issue.

[6] Further mediation was not possible and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking representations from the ministry and the two affected parties who had not consented to the disclosure of their information. The ministry provided representations. The two affected parties consented to the release of the information remaining at issue.

[7] In this order, I find that the section 21(1) exemption does not apply to the information remaining at issue, because the affected parties have consented to the release of their information in accordance with section 21(1)(a). I order the ministry to disclose the information remaining at issue to the appellant.

¹ Although the ministry had initially relied on the personal privacy exemption at section 49(b), it clarified its position during mediation, stating that section 49(b) (exception to the right of access to one's own personal information) was not applicable in the circumstances of this request because the records do not contain the appellant's own personal information. The ministry correctly clarified that the applicable personal privacy exemption to consider is the section 21(1) exemption.

RECORDS:

[8] The information remaining at issue consists of the statements of the two affected parties, which are found at pages 21, 22 and 25 of the records at issue. Their names, addresses, dates of birth, telephone numbers, driver's licence number and signatures are no longer at issue because the appellant does not seek access to that information.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

DISCUSSION:

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

[9] The ministry applied the personal privacy exemption at section 21(1) to the information at issue. Section 21(1) can only apply to information that is "personal information", which is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except 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;

[10] 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.²

[11] 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.³ However, 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.⁴

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵ In the Notice of Inquiry, I asked the ministry and the affected parties to explain whether it is reasonable to expect that an individual may be identified if the information is disclosed and in particular, whether the affected parties who gave the statements could be identified from the disclosure of their statements alone, without the disclosure of their names, addresses, dates of birth, telephone numbers or signatures. The ministry submitted that whether the affected parties would be identifiable depends on the nature of the interaction between the driver of the vehicle that had the accident and the affected parties who made statements, and that the affected parties would be in a better position to speak to this issue. However, the affected parties did not provide representations on this issue.

[13] I find that the information at issue, which consists of the affected parties' statements to the OPP, is recorded information about the affected parties. As there is no indication in the information before me that these individuals were acting in their

² Order 11.

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

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

professional or official capacities when they made their statements, I find that the information that they provided about the accident was made in their personal capacities.

[14] In light of the fact that the affected parties have now consented to the release of their information (see Issue B, below), it is not necessary to me to make a determination about whether the information about them is their personal information. I will assume, without deciding, that it is reasonable to expect that the affected parties may be identified if the information at issue is disclosed. For the purposes of this appeal, therefore, I have assumed that the information remaining at issue contains the personal information of the affected parties within the meaning of that term as defined in section 2(1).

[15] I also find that the information at issue contains the personal information of the driver, as the statements consist of the affected parties' observations of the driver and/or his vehicle around the time of the motor vehicle accident.

Issue B: Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?

[16] 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.

[17] One of the exceptions is contained in section 21(1)(a), which provides as follows:

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

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

[18] For section 21(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request.⁶

[19] The driver provided his consent to the ministry during the request stage. In the ministry's representations submitted during the adjudication stage of the appeal, it submitted that if the affected parties were to provide consent, the ministry would act in accordance with it.

[20] As noted above, during the adjudication stage of the appeal, the affected parties provided their consent to the disclosure of the information remaining at issue. One

⁶ Order PO-1723.

affected party consented to the release of all of the information relating to him/her in the records, while the other affected party consented to the release of his/her information with the exception of his/her name, address, telephone number, signature, driver's licence number or date of birth. As noted above, however, the appellant does not seek this information.

[21] Since all parties whose personal information appears in the records at issue have consented to the release of the information remaining at issue, I find that the exception at section 21(1)(a) applies to this information. The information, therefore, is not exempt under section 21(1). As no other exemption has been claimed by the ministry, I will order that it disclose the information remaining at issue to the appellant.

ORDER:

1. I allow the appeal and order the ministry to disclose the information remaining at issue to the appellant. With the ministry's copy of this order, I am providing copies of pages 21, 22 and 25 of the records, with the information that is not at issue highlighted in yellow. All other information in those pages is to be disclosed.
2. I order that the above disclosure be made by January 30, 2018 but not before January 25, 2018.
3. In order to ensure compliance with provisions 1 and 2 of this Order, I reserve the right to require the ministry to provide me with a copy of the information that it discloses to the appellant.

Original Signed by: _____
Gillian Shaw
Adjudicator

December 19, 2017 _____