

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3877

Appeal PA17-472

Ministry of Transportation

September 7, 2018

Summary: The Ministry of Transportation (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information regarding the loss of the requester's driver's licence. The ministry issued a decision denying access to the responsive record pursuant to sections 20 (danger to public health and safety) with 49(a) (discretion to refuse requester's own information) of the *Act*. This order upholds the ministry's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of personal information), 20, and 49(a).

OVERVIEW:

[1] The Ministry of Transportation (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for information regarding the loss of the requester's driver's licence as a result of a specific incident.

[2] The ministry issued a decision denying access to the record pursuant to sections 20 (danger to public health and safety) with 49(a) (discretion to refuse requester's own information) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision.

[4] During the course of mediation, at the appellant's request, the ministry provided more information regarding the claiming of the exemption.

[5] Further mediation was not possible and the appellant advised the mediator that she would like to have the appeal proceed to adjudication. Accordingly, this file proceeded to adjudication, where an adjudicator conducts an inquiry. Representations were sought and received from the ministry, an affected party,¹ and the appellant in accordance with section 7 of the IPC's² *Code of Procedure and Practice Direction 7*.³

[6] In this order, I uphold the ministry's decision that the record is exempt under section 20 with section 49(a).

RECORD:

[7] At issue is a one-page report related to the loss of the appellant's driver's licence.

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 discretionary exemption at section 49(a) (discretion to refuse requester's own information) in conjunction with the section 20 (threat to safety or health) exemption apply to the information at issue?
- C. Did the ministry exercise its discretion under section 49(a)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

[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) as follows:

¹ The affected party's representations were appended to the ministry's representations.

² Information and Privacy Commissioner/Ontario.

³ The ministry provided both confidential and non-confidential representations. I have considered the entirety of the ministry's representations, however, I will only refer to the non-confidential representations in this order.

“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;

[9] 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.⁴

[10] 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.⁵

[11] Even if information relates to an individual in a professional, official or business

⁴ Order 11.

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁶

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁷

Analysis/Findings

[13] The parties did not provide representations on this issue. However, based on my review of the record, I find that it contains the personal information of the appellant, including her name, home address and telephone number, date of birth and medical history in accordance with paragraphs (b), (c), (d) and (h) of the definition of personal information in section 2(1). The record does not contain the personal information of other individuals.

B. Does the discretionary exemption at section 49(a) (discretion to refuse requester's own information) in conjunction with the section 20 (threat to safety or health) exemption apply to the information at issue?

[14] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

[15] Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[16] Section 49(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.⁸

[17] Where access is denied under section 49(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[18] In this case, the ministry relies on section 49(a) in conjunction with section 20. Section 20 states:

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁸ Order M-352.d'ac

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[19] For this exemption to apply, the institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁹

[20] An individual's subjective fear, while relevant, may not be enough to justify the exemption.¹⁰

[21] The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.¹¹

[22] The ministry's and the affected party's representations on this issue were not shared with the appellant as they met the confidentiality criteria set out in section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[23] The appellant did not address this issue directly, instead her representations focused on the circumstances surrounding the creation of the record and other matters.

Analysis/Findings

[24] Both the ministry and affected party's confidential representations address the potential harm set out in section 20 if the record is disclosed to the appellant. In particular, page 2 of the ministry's representations and all of the affected party's representations provide detailed evidence in support of the application of section 20. Moreover, I find the evidence in these parties' representations to be sufficiently detailed to establish that disclosure of the record could reasonably be expected to seriously threaten the safety or health of an individual. Finally, I find that the ministry and affected party have provided evidence to establish the seriousness of the potential consequences should I order disclosure of the record at issue.

[25] Based on my review of the parties' representations and the record, I find that disclosure of the record could reasonably be expected to seriously threaten the safety or health of an individual.

[26] In particular, I find that the ministry and the affected party have provided sufficient evidence about the potential for harm. Furthermore, I am satisfied that this risk of harm under section 20 is well beyond the merely possible or speculative.

⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹⁰ Order PO-2003.

¹¹ Order PO-1817-R.

[27] Therefore, subject to my review of the ministry's exercise of discretion, the record is exempt under section 49(a) in conjunction with section 20.

C. Did the ministry exercise its discretion under section 49(a)? If so, should this office uphold the exercise of discretion?

[28] The section 49(a) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[29] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[30] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹² This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[31] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹³

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

¹² Order MO-1573.

¹³ Orders P-344 and MO-1573.

- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[32] The ministry states that it sought to invoke the exemptions provided under sections 20 and 49(a) mindful of the *Act's* principles and nature of the exempted information itself. It states that disclosure of this information would do little to advance the access principles enshrined in the *Act* and would be of no benefit to the appellant. Further, the ministry states that it takes the affected party's concerns seriously, and submits that these concerns are more than merely speculative and for that reason outweigh the appellant's interest in the record.

[33] The appellant did not address this issue directly. Instead, her representations focus on the background information related to the loss of her driver's licence and her current situation.

Analysis/Findings

[34] Based on my review of the parties' representations and the record, I agree with the ministry that it exercised its discretion in a proper manner taking into account relevant factors and not taking into account irrelevant factors in deciding to deny access to the record.

[35] I find that the ministry took into account the relevant considerations listed above, including the wording of the section 20 exemption and the interests it sought to be protected under the section 20 exemption.

[36] Therefore, I find that the record is exempt by reason of section 49(a) with section 20.

ORDER:

[37] I uphold the ministry's decision and dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

September 7, 2018 _____