

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3939

Appeal PA17-529

Ministry of Natural Resources and Forestry

March 25, 2019

Summary: The requester submitted a request to the Ministry of Natural Resources and Forestry (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a dog bite incident involving the requester. The ministry located responsive records and notified the dog owner. The ministry decided to grant the requester partial access to the records, advising that it withheld portions of the records under the personal privacy exemption in section 21(1). The dog owner (now the appellant) appealed the ministry's decision. During mediation, the requester confirmed he only seeks access to the appellant's name, which the ministry had decided to disclose to the requester. In this order, the adjudicator finds that disclosing the appellant's name to the requester would not constitute an unjustified invasion of personal privacy taking into consideration the presumptions and factors in sections 21(2) and (3). The adjudicator orders the ministry to disclose the appellant's name to the requester and dismisses the appeal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F31, as amended, sections 2(1) (definition of *personal information*), 21(1)(f), 21(2)(b), (d), (e), (f), (h) and (i), 21(3)(b) and 49(b).

Orders and Investigation Reports Considered: Orders MO-2954, MO-2980, MO-3370 and MO-3383.

OVERVIEW:

[1] An individual (the requester) filed an access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) with the Ministry of Natural Resources and Forestry (the ministry). The requester sought access to all records

relating to a “dog attack incident” involving the requester, specifically information relating to the identity of the dog owner.

[2] After locating responsive records, the ministry notified the dog owner as an affected party pursuant to section 28 of the *Act* to obtain their views regarding disclosure of information that may relate to them. The affected party did not respond to the ministry’s notice.

[3] The ministry issued a decision to the requester and affected party advising that it would grant the requester partial access to the records. The ministry advised the parties it withheld portions of the records under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[4] The affected party, now the appellant, appealed the ministry’s decision.

[5] During mediation, the ministry issued a revised access decision to the parties, granting the requester access to the appellant’s first and last name. The requester confirmed that he only pursues access to the appellant’s name. The appellant confirmed they object to the disclosure of their name.

[6] Because the records may contain the requester’s personal information, the mediator added section 49(b) (personal privacy) as an issue to the appeal.¹

[7] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeal process where an adjudicator may conduct a written inquiry into the issues. I began my inquiry by inviting the appellant and the ministry to make representations in response to a Notice of Inquiry, which outlines the facts and issues under appeal. The appellant and the ministry submitted representations. The original requester also submitted representations.

[8] In the discussion that follows, I find that disclosure of the appellant’s name to the requester would not constitute an unjustified invasion of personal privacy under section 49(b) and order the ministry to disclose this information to the requester. I dismiss the appeal.

RECORDS:

[9] There are two pages of records at issue. The first page is taken from an Ontario Parks Enforcement Coordinator’s notebook and the second is an Ontario Parks Park

¹ The ministry relied on section 21(1), the mandatory personal privacy exemption. The correct personal privacy exemption to consider where the records contain the requester’s own personal information is the discretionary exemption at section 49(b).

Complaint and Occurrence Report (the report). The only information at issue in these records consists of the appellant's first and last name.

[10] During mediation, the requester confirmed he only seeks access to the appellant's name. Accordingly, the scope of the inquiry is only whether the requester is entitled to access the appellant's name. The requester's position was confirmed in the Mediator's Report, which was shared with all the parties to the appeal. The requester was provided with an opportunity to identify any errors or omissions in the Mediator's Report, but did not identify any issues with the scope of the appeal.

[11] However, during the inquiry, the requester stated he seeks access to the appellant's name and address. As stated above, during mediation, the requester confirmed his interest in the appellant's name *only*. Therefore, only the appellant's name is within the scope of this appeal and I will not consider whether the requester should also be granted access to the appellant's address.

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(b) apply to the information at issue?

DISCUSSION:

Issue A: Does the record contain personal information as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

[12] 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. The term *personal information* is defined in section 2(1) of the *Act*. The definition states, in part,

"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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except where they relate to another individual,

...

(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.

To qualify as personal information, the information must be about the individual in a personal capacity. The parties do not dispute that the report and the notes contain the personal information of the appellant and the requester.

[13] I reviewed the records and find that they contain the personal information of the requester and the appellant. Specifically, the records contain the requester's name, birthdate, address, telephone number and personal view or opinions. In addition, the records contain the appellant's name and address as well as the views or opinions of another individual relating to the appellant. The appellant's name as it appears in these records identifies them as the dog owner. I find that this information qualifies as the personal information of the requester and the appellant under paragraphs (a), (d), (e),(g) and (h) as well as the introductory wording of the definition of *personal information* in section 2(1) of the *Act*.

[14] Having found that the records contained the mixed personal information of the appellant and the requester, I will consider the requester's right of access to the appellant's name, which the appellant claims should be exempt under section 49(b) of the *Act*.

Issue B: Does the discretionary exemption at section 49(b) apply to the personal information at issue?

[15] The appellant takes the position that their name is exempt under the personal privacy exemption. Since the records contain personal information relating to the requester, I must consider whether the information at issue is exempt under section 49(b) of the *Act*.

[16] Section 47(1) of the *Act* 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.

[17] Under section 49(b), where a record contains the personal information of both the requester and another individual and disclosure of the record would be an unjustified invasion of the other individual's personal privacy, that information may be

exempt from disclosure. Section 49(b) states,

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

where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

Even if the personal information falls within the scope of section 49(b), an institution may exercise its discretion to disclose the information to the requester after weighing the requester's right of access to their own personal information against the appellant's right to protection of their privacy.

[18] In this appeal, I must determine whether disclosing the appellant's name to the requester would constitute an unjustified invasion of their personal privacy under section 49(b).

[19] Section 21 provides guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 49(b). If the information fits within any of the paragraphs of sections 21(1) or 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). The parties have not claimed that any of the exceptions in section 21(1) or exclusions in section 21(4) apply and I am satisfied that none apply.

[20] In the circumstances of this appeal, in determining whether the disclosure of the appellant's name would be an unjustified invasion of personal privacy under section 49(b), I must consider and weigh the factors and presumptions in sections 21(2) and 21(3) and balance the interests of the parties.²

Representations

[21] The ministry refers to a number of previous IPC decisions that considered section 21(2)(d) of the *Act* in the context of dog bite incidents in its representations. Specifically, the ministry referred to Orders MO-3400, MO-3383, MO-2016 and MO-2980. The ministry states it found that Order MO-2980 was particularly applicable. In Order MO-2980, the adjudicator found,

... I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the [requester] in this particular case is relevant to a fair determination of her rights under section 14(2)(d) [the municipal

² Order MO-2954.

equivalent of section 21(2)(d) of the Act], and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.³

The ministry states this analysis was adopted in Order MO-3383, which also considered a request for a dog owner's personal information.

[22] In light of these recent decisions of the IPC, the ministry states it reconsidered the factor in section 21(2)(d) and concluded that releasing the appellant's name to the requester would not be an unjustified invasion of their personal privacy in the circumstances.

[23] The requester submits that the disclosure of the appellant's name would not be an unjustified invasion of personal privacy. The requester submits that the factors in favour of disclosure in sections 21(2)(b) and (d) apply in the circumstances of this appeal. With regard to section 21(2)(b), the requester submits that the disclosure of the appellant's name would be consistent with the goal of promoting public safety, by holding owners of dogs responsible for the damage they cause. With regard to section 21(2)(d), the requester submits that he would not be able to exercise his legal rights without the appellant's name.

[24] The appellant submits that their name should not be disclosed to the requester and that disclosure of their name would be an unjustified invasion of their personal privacy.

Analysis and Findings

[25] In determining whether the disclosure of the appellant's name would constitute an unjustified invasion of personal privacy under section 49(b), I will consider and weigh the presumption in section 21(3)(b) along with the factors in section 21(2) to balance the interests of the parties.⁴

[26] The relevant paragraphs of sections 21(2) and 21(3) state,

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

³ Order MO-2980 at para. 55.

⁴ This approach was applied in Orders MO-2954, MO-2980, MO-3088, MO-3370 and MO-3383, which relate to dog bite incidents.

(b) access to the personal information may promote public health and safety;

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

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the records.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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.

Section 21(3)(b): investigation into violation of law

[27] None of the parties raised the presumption in section 21(3)(b). Based on my review of the records, I do not find that the appellant's name was compiled and is identifiable as part of an investigation into a possible violation of law. None of the parties raised the application of section 21(3)(b) or identified the violation of law that would have been investigated. Upon review of the records, which consist of an Ontario Parks Occurrence Report and the notebook entries of an Ontario Parks Enforcement Coordinator, it is not apparent that the information was collected and is identifiable as part of an investigation into a possible violation of law. I find that I do not have sufficient evidence to determine that the presumption in section 21(3)(b) applies to the appellant's name in this case.

[28] As stated above, for records claimed to be exempt under section 49(b), the IPC will consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.⁵

⁵ Order MO-2954

Section 21(2)

[29] In its representations, the ministry refers to Order MO-2980 to support its position that the factors favouring disclosure in sections 21(2)(b) and (d) apply to the appellant's name. In Order MO-2980, the adjudicator considered the factor in the municipal equivalent to section 21(2)(b) and stated,

One of the underlying purposes of the civil liability provisions in the *DOLA*⁶ is to promote public safety by ensuring that dog owners are held accountable if their dog bites or attacks another person. Moreover, the *DOLA* gives the court the discretion to order "that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety."⁷

I find, therefore, that disclosing the dog owners name to the [requester] in this particular case may promote public safety under section 14(2)(b), because it may lead to civil proceedings and a possible court order with public safety ramifications. Consequently, this factor weighs in favour of disclosing the dog owner's name to her and I would give moderate weight to it.

I adopt this analysis for the purposes of this appeal. The requester takes the position that the disclosure of the appellant's name would be consistent with the goal of promoting public safety by holding dog owners responsible for damage they may cause. In the circumstances of this appeal, I find that section 21(2)(b) weighs in favour of disclosing the appellant's name to the requester and I give this factor moderate weight.

[30] With regard to section 21(2)(d), I refer to Order MO-2980, again, in which the adjudicator stated,

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part [test] for section 14(2)(d) [the municipal equivalent to section 21(2)(d)] is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);
- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;

⁶ Dog Owners' Liability Act, R.S.O. 1990, Chapter D.16. (*DOLA*)

⁷ Section 4(3)(b) of *DOLA*.

(3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and

(4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

.... I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

I adopt this analysis as well as the four-part test for section 21(2)(d) relied on therein for the purposes of this appeal. Based on my review of the circumstances, I find for the following reasons that the disclosure of the appellant's name to the requester is relevant to a fair determination of the requester's rights under section 21(2)(d).

[31] First, the requester confirms that he intends to file a claim for damages under *DOLA* against the appellant. I am satisfied that disclosure of the appellant's name relates to the requester's legal right to pursue a civil remedy under the *DOLA*. Upon review of the requester's representations, I am also satisfied that the requester's legal rights relate to a proceeding that is not completed. Therefore, I find that parts 1 and 2 of the section 21(2)(d) test are met.

[32] Furthermore, I am satisfied that disclosure of the appellant's name has some bearing on the requester's right to pursue a civil claim against the dog owner and that this information is required for the requester to bring the action and prepare for the proceeding. Accordingly, I am satisfied that parts 3 and 4 of the section 21(2)(d) test is met and find that the factor at section 21(2)(d) applies in the circumstances of this appeal.

[33] The appellant did not directly address any of the factors in their representations. However, the appellant submits that their name is confidential to them, thereby raising the possible application of the factor in section 21(2)(h). In Order MO-3383, the adjudicator considered the factor in section 21(2)(h) in relation to an individual's name and contact information relating to a dog bite incident. The adjudicator found that the

affected party's expectation of confidentiality in that case "is reduced given that the personal information at issue was collected as the result of a dog bite incident and him being the owner of the dog in question."⁸ The adjudicator concluded that the factor at section 21(2)(h) favouring privacy protection applied but gave it moderate weight.

[34] I adopt this analysis for the purposes of this appeal. The appellant's name was collected by Ontario Parks due to an incident involving their dog and the requester. In their representations, the appellant submits that they provided their personal information to the Ontario Parks officer in confidence. However, following Order MO-3383, I find that there is a reduced expectation of confidentiality on the part of the appellant because the personal information was collected as a result of the dog bite incident and the appellant is the owner of the dog in question. Therefore, I will give this factor moderate weight in the circumstances of this appeal.

[35] As discussed above, the only information at issue is the appellant's name, which, if disclosed, would reveal that they are the dog owner. Given the nature of the incident, I find that the factors favouring privacy protection in sections 21(2)(f), which considers whether the information is highly sensitive, and 21(2)(i), which considers whether the disclosure of the information would cause unfair damage to the appellant's reputation, may apply to the appellant's personal information. However, the appellant did not make any submissions that would suggest that the disclosure of their name could reasonably result in significant personal distress, as required for section 21(2)(f) to apply.⁹ In addition, the appellant has not provided any submissions to suggest that the disclosure of their name would result in unfair damage to their reputation, as required for section 21(2)(i) to apply.¹⁰ In the absence of such representations from the appellant, I find that the factors favouring privacy protection in sections 21(2)(f) and (i) do not apply to disclosure of the appellant's name.

[36] I have also considered whether section 21(2)(e) applies to weigh in favour of privacy protection. This section requires that the individual to whom the information relates will be exposed unfairly to pecuniary or other harm. In my view, the fact that the appellant may be exposed to pecuniary harm as a result of the requester pursuing a civil claim does not necessarily lead to a conclusion that the disclosure will result in the appellant being exposed to *unfair* pecuniary harm. I note that in Order MO-3088, the adjudicator found that a dog owner's exposure to pecuniary or other harm as the result of a dog bite incident is "merely a consequence that any defendant would be exposed to in a civil action." Therefore, I find that the factor at section 21(2)(e) does not apply to the circumstances before me.

⁸ Order MO-3383 at para 48.

⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

¹⁰ Orders P-256 and MO-3833.

[37] In addition, I have considered whether there are any unlisted factors favouring disclosure in the circumstances of this appeal. In Order MO-2954, which also relates to a dog bite incident, the adjudicator found that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. In that appeal, the adjudicator found that withholding the exact nature of the complaint a municipality received and the impact the situation had on the complainant would hinder the requester's ability to pursue the avenues available to him, and attributed significant weight to this factor. In Order MO-2980, the adjudicator found that the police's refusal to provide the requester with the dog owner's name in a dog bite case fettered her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries, and attributed significant weight to this factor.

[38] In Order MO-3383, the adjudicator applied the above principles to the appeal before her, in which the appellant had retained the services of a lawyer to explore legal remedies in response to a dog bite incident. One of the remedies available to the appellant was to file a civil claim against the dog owner. Upon review of the circumstances, the adjudicator found that the police's refusal to provide the appellant with dog owner's name could fetter her right to commence proceedings under the *DOLA*. The adjudicator gave significant weight to this unlisted factor with respect to the dog owner's name.¹¹

[39] I agree with this reasoning and apply it to the case before me. I find that the failure to disclose the appellant's name to the requester would fetter the requester's right to commence proceedings under the *DOLA*, which the requester has indicated he intends to do. Given these circumstances, I give significant weight to this unlisted factor with respect to the dog owner's name.

[40] I have also considered whether there are any unlisted factors favouring non-disclosure, but the appellant did not argue any and none are evident to me.

Summary

[41] In my consideration of section 49(b) to the appellant's name, I have considered and weighed the factors and presumptions in sections 21(2) and (3) and balanced the interests of the parties. In doing so, I have found that:

- The presumption at section 21(3)(b) does not apply to the appellant's name.

¹¹ I note the adjudicator found there was not sufficient evidence before her to suggest that the police's refusal to disclose the dog owner's address and telephone number would fetter the appellant's ability to commence civil proceedings. As such, the adjudicator found that the unlisted factor did not apply to the dog owner's address and telephone number. See Order MO-3383 at para 58.

- The factor favouring disclosure at section 21(2)(b) applies to the disclosure of the appellant's name and should be given considerable weight.
- The factor favouring disclosure at section 21(2)(d) applies to the appellant's name and should be given considerable weight.
- The factor favouring privacy protection at section 21(2)(h) applies and should be given moderate weight.
- The factors favouring privacy protection at sections 21(2)(e), (f) and (i) do not apply in the circumstances of this appeal.
- The unlisted factor that the *Act* should not be used in a manner that prevents individuals from exercising their legal rights applies to the disclosure of the appellant's name and should be given significant weight.

Taking sections 21(2) and (3) into consideration and balancing the interests of the parties, I find that disclosure of the appellant's name to the requester would not constitute an unjustified invasion of personal privacy.

[42] Accordingly, the appellant's name is not exempt under section 49(b) of the *Act*. I uphold the ministry's decision and order it to disclose the appellant's name to the requester. I dismiss the appeal.

ORDER:

I uphold the ministry's decision. I order the ministry to disclose the appellant's name to the requester by **May 1, 2019** but not before **April 25, 2019**.

Original signed by _____
Justine Wai
Adjudicator

March 25, 2019