

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4027

Appeal PA19-00143

Ministry of the Solicitor General

February 12, 2020

Summary: The Ministry of the Solicitor General received a request for access to two 911 calls relating to a motor vehicle accident involving the requester. The ministry denied access to the calls, citing the discretionary personal privacy exemption in section 49(b) of the *Act*. The adjudicator finds that the records do not contain the callers' personal information, and therefore cannot be withheld under section 49(b). Accordingly, she orders the ministry to disclose the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, sections 2(1) (definition of "personal privacy").

Orders and Investigation Reports Considered: Order PO-2191.

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a 911 call related to a specified motor vehicle accident involving the requester.

[2] The ministry issued a decision denying access to the responsive audio recording pursuant to the discretionary personal privacy exemption under section 49(b), with reference to sections 21(2)(f), 21(3)(a), and 21(3)(b) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision to this office and this appeal was opened. A mediator was appointed to explore the possibility of resolving the issues in the appeal.

[4] During the mediation stage of the appeal process, the appellant's representative advised the mediator that the appellant is only interested in the information provided by the 911 caller and not the caller's identity or contact information. The appellant's representative asked the mediator to attempt to obtain the individual's consent to release this information to the appellant.

[5] In response, the ministry advised the mediator that there were two 911 calls made by two different individuals; however, disclosure through consent would not be possible because the callers did not identify themselves or provide their contact information. The ministry advised that it would not change its decision to deny access to the 911 calls.

[6] As a mediated resolution was not achieved, the file was moved to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry under the *Act*. As the adjudicator, I conducted an inquiry by inviting and receiving representations from the ministry and the appellant. The parties' representations were shared in accordance with *Practice Direction Number 7* and the IPC's *Code of Procedure*.

[7] Because the ministry does not have the 911 callers' contact information, neither the ministry nor this office was able to notify them of the appellant's request and resulting appeal.

[8] For the reasons that follow, I order the ministry to disclose both records because I find that neither record contains the caller's personal information and, as such, they cannot be withheld under the personal privacy exemption in section 49(b).

RECORDS:

[9] The records at issue are the audio recordings of two 911 calls to the Ontario Provincial Police. The first call (call #1) was made by caller #1 and is two minutes and 14 seconds long. The second call (call #2) was made by caller #2 and is one minute and seven seconds long.

DISCUSSION:

The records do not contain the "personal information" of individuals other than the appellant and cannot be withheld under section 49(b)

[10] In order to determine whether the personal privacy exemption in section 49(b) applies to the 911 call recordings, as the ministry claims, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. This is because the exemption in section 49(b) only applies to 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;

[11] 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.¹

[12] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

¹ Order 11.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[13] 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.² 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.³

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

Representations

The ministry’s representations

[15] The ministry explains that the records at issue consist of two audio recordings of 911 phone calls seeking police assistance following a motor vehicle accident. While neither caller identified themselves, the ministry maintains that the calls contain the callers’ personal information. The ministry submits that the callers’ voices, “including their tone and inflection, when combined with the content of their discussions with the 911 dispatchers, which includes their actions and observations [...] renders them identifiable.”

[16] With respect to call #2 in particular, the ministry maintains that although the caller mentions their job title, the record nevertheless contains their personal, as opposed to professional information, because they did not call 911 in the course of their usual employment duties.

The appellant’s representations

[17] The appellant acknowledges that the records may contain personal information

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

as defined in paragraphs (b) and (h) of the defined in section 2(1) of the *Act*. However, she explains that she is only interested in information relating to the motor vehicle accident in which she was involved, because she suffered a head injury and lost consciousness, and therefore has no recollection of the immediate aftermath. She explains that she would be open to obtaining access to an audio or written record in which the callers' personal information was severed, or the record was otherwise anonymized.

Analysis and findings

[18] As noted in the ministry's representations, calls #1 and #2 do not contain the callers' names or contact information. Nevertheless, the ministry maintains that it is reasonable to expect that the callers could be identified if the records are disclosed because they would reveal the callers' voices, including their tone and inflection, as well as their observations of the accident. Therefore, I must consider whether the callers could reasonably be identifiable considering the information contained in the records, as well as the surrounding circumstances, and, if so, whether the information is personal information, rather than business or professional information.

[19] For the following reasons, I find that caller #1 is not reasonably identifiable and call #1 does not contain their personal information, as that term is defined in the *Act*. Call #1 reveals caller #1's gender,⁵ the city where they live, and their views or opinions regarding the accident and the need for police assistance. This information could conceivably fit within paragraphs (a), (d), and (e) of the definition of personal information. However, the introductory wording of the definition in section 2(1) is important here, given its requirement that personal information consist of "recorded information about an identifiable individual." In other words, for the information to be the caller's "personal information" for the purposes of the *Act*, it must be reasonable to expect that the caller may be identified if the information is disclosed.⁶

[20] In Order PO-2191, Adjudicator Frank DeVries considered police records relating to a motor vehicle accident. One of the severances at issue in that appeal contained information that was provided to the police by a complainant, describing the incident from the complainant's perspective. Adjudicator DeVries noted that the records did not contain the complainant's name, or any other information that could readily be recognized as "identifying" information. However, he also took notice of the fact that the appellant was the subject of a criminal prosecution. Adjudicator DeVries concluded that there was a reasonable expectation that the complainant could be identified by the appellant using information available to him through the disclosure process in the

⁵ The caller's gender is revealed through the audio recording, not as a result of what was said on the call.

⁶ Order P-230; Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

criminal proceeding. Therefore, in the circumstances of that appeal, he found the complainant's statements to the police were their personal information for the purposes of the *Act*.

[21] In my view, however, the evidence in this appeal does not support a similar finding. In making this decision, I took into account that there is no evidence before me to suggest that the appellant has other information available to her to identify the caller who was a witness to the accident. I have also considered the appellant's submissions, which explain that she has "no memory of the immediate aftermath of the accident" due to a head injury that she sustained in the collision. In addition, I note that the accident occurred on a busy 400-series highway, which means that any number of individuals on the highway could have called 911 to request assistance. And, finally, I considered the size and location of the caller's city of residence,⁷ and am satisfied that disclosing their gender, voice, and the fact that they were on this particular highway could not reasonably result in them being identified.

[22] Considering all of the above, I am not persuaded that the appellant could reasonably be expected to use the information in call #1, together with other information available to her, to identify caller #1. Therefore, I find that the audio recording of call #1 does not contain caller #1's personal information for the purposes of the *Act*.

[23] With respect to call #2, I find, for the following reasons, that although caller #2 may be identifiable, their information is of a professional, not personal, nature, and is therefore not "personal information" for the purposes of the *Act*.

[24] 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.⁸ However, information that relates to an individual in a professional, official or business capacity may still qualify as personal information if the information reveals something of a personal nature about the individual.⁹ The ministry maintains that call #2 was not made in the usual course of caller #2's employment duties, and therefore should be considered their personal, and not professional, information.

[25] Having listened to the record, I am satisfied that caller #2 called the police to report a motor vehicle accident in which a member of their company was involved. Considering the caller's job title, which is stated in the record, I am satisfied that they called 911 in the course of carrying out their professional duties or obligations, and not in a personal capacity.

⁷ Which is mentioned in the record.

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁹ Orders P-1409, R-980015, PO-2225 and MO-2344.

[26] In addition, having listened to the record, I am satisfied that the information that the caller provided to the police when explaining the need for police assistance does not contain a personal element.¹⁰ In my view, while the record contains the caller's professional title, which I accept may be used with knowledge of the incident to identify caller #2, they would be identifiable only in their professional, and not a personal, capacity. Accordingly, I find that call #2 contains the type of information contemplated by section 2(3) of the *Act*, which excludes from the definition of personal information in section 2(1) information that identifies an individual in a business, professional, or official capacity. The information in call #2 is therefore not caller #2's personal information.

[27] As mentioned above, the personal privacy exemption at section 49(b) only applies to personal information. As I have found that calls #1 and #2 do not contain the callers' personal information, and the ministry has not claimed any other exemptions (and no mandatory exemptions apply), I will order the ministry to disclose these records in their entirety to the appellant.

ORDER:

I order the ministry to disclose the records to the appellant by March 16, 2020.

Original Signed by: _____

Jaime Cardy
Adjudicator

February 12, 2020

¹⁰ Order PO-2225.