

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4459

Appeal PA23-00176

Ministry of the Solicitor General

November 23, 2023

Summary: The Ministry of the Solicitor General (the ministry) received a request for an Ontario Provincial Police occurrence report. The ministry granted partial access to the report and the appellant continued to seek the name and address of an affected party, withheld under section 49(b) (personal privacy) of the *Act*.

In this order, the adjudicator finds that the withheld personal information is not exempt under section 49(b). He orders the information disclosed.

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

Orders Considered: Orders P-1618, PO-3712, MO-4213, and MO-2442.

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received the following request under the *Freedom of Information and Protection of Privacy Act* (the *Act*):

The complete Ontario Provincial Police (OPP) records, including Investigating Officer [police officer's name and badge number] notes, relating to the Motor Vehicle Collision Report [specified number], that occurred on [specified location], in Ottawa, ON, on May 9, 2022.

[2] The ministry granted partial access to the responsive records, with access to the

withheld information denied based on sections 49(a) (refusing requester's own information) read with 14(1)(l) (facilitate unlawful act), and 49(b) (personal privacy) of the *Act*. In the decision, the ministry indicated that some information was removed from the records as it was deemed to be not responsive to the request. The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (IPC).

[3] During mediation, the ministry identified another responsive record and granted partial access to it, with portions withheld under sections 14(1)(l), 49(a), and 49(b) of the *Act*, and with some information withheld as non-responsive. The appellant confirmed that he is only pursuing access to the name and address of one of the affected parties in the records, and accordingly only this information, withheld under section 49(b) of the *Act*, is at issue in this appeal. The mediator was not able to obtain the consent of the affected party for the release of the information.

[4] Mediation did not resolve the appeal and the file was moved to the adjudication stage, where an adjudicator may conduct an inquiry. I sought and received representations from the parties and reply representations from the ministry and affected party. Representations were shared in accordance with the IPC's *Code of Procedure*.

[5] For the reasons that follow, I allow the appeal and order the ministry to disclose the name and address of the affected party to the appellant.

RECORDS:

[6] The information remaining at issue consists of the name and address of an affected party contained within an occurrence report.

ISSUES:

- A. Does the occurrence report contain personal information within the meaning of section 2(1) of the *Act*?
- B. Does the discretionary personal privacy exemption at section 49(b) apply to the personal information at issue?

DISCUSSION:

Issue A: Does the occurrence report contain personal information within the meaning of section 2(1) of the *Act*?

[7] Before I consider the exemption claimed by the ministry, I must first determine

whether the occurrence report contains “personal information.” If it does, I must determine whether the personal information belongs to the appellant, other identifiable individuals, or both. “Personal information” is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.”

[8] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.¹ Section 2(1) of the *Act* gives a list of examples of personal information.

[9] The ministry submits that the address of an individual is specifically included within the statutory definition of personal information. It submits that the name is also personal information because it is linked to the home address and would identify the affected party in relation to a law enforcement investigation. The appellant did not dispute this, and the affected party did not provide specified representations on whether the record contained personal information.

[10] I have reviewed the occurrence report and I find that it contains the names and addresses of the appellant and multiple affected parties, which are clearly personal information. Having found that the report contains the personal information of the appellant and other individuals, I will consider the application of the personal privacy exemption at section 49(b).

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

[11] 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 some exemptions from this right.

[12] Under the section 49(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual’s personal information to the requester if disclosing that information would be an “unjustified invasion” of the other individual’s personal privacy.

[13] The section 49(b) exemption is discretionary. This means that the institution can decide to disclose another individual’s personal information to a requester even if doing so would result in an unjustified invasion of other individual’s personal privacy.²

¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

² See below in the “Exercise of Discretion” section for a more detailed discussion of the institution’s exercise of discretion under section 49(b).

[14] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 49(b). Additionally, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.³

[15] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 49(b). Section 21(2) provides a list of factors for the ministry to consider in making this determination, while section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[16] Section 21(4) sets out certain types of information whose disclosure is not an unjustified invasion of personal privacy. The appellant did not claim that any of these situations apply to this appeal. I have reviewed the record and I find that none of the situations described in section 21(4) are applicable in this appeal. In determining whether the disclosure of the withheld information in the report would be an unjustified invasion of personal privacy under section 49(b), therefore, I will consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.⁴

Representations

Ministry representations

[17] The ministry submits that disclosing the name and address of the affected party would constitute an unjustified invasion of personal privacy. They state that the affected party did not consent to the disclosure of the information and the information was compiled as part of an OPP investigation into a motor vehicle collision, which could have resulted in charges being laid under various statutes. They submit that the presumption in section 21(3)(b) (investigation into a possible violation of law) applies to the withheld information.

[18] The ministry also claims that the section 21(2)(f) (highly sensitive) factor applies to the withheld information. It references Order P-1618, where it was found that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the OPP is "highly sensitive for the purpose of section 21(2)(f). It also references Order PO-3712, where it was found that section 21(2)(f) applied where consent had not been obtained from third parties in the context of disclosure of information in law enforcement investigation records. It states that the reasoning in that order applies here.

³ Order PO-2560.

⁴ Order MO-2954.

Affected party's representations

[19] The affected party submits that privacy is a fundamental right and that the access request represents an intrusion into her private life. She questions why the appellant requires the information and raises concerns about how it would be handled and who it would be shared with. She states that if the appellant wishes to bring a lawsuit against her, there are other avenues for obtaining this information, and that the contents of a police report are confidential. She states that any claims related to the motor vehicle collision have already been dealt with by each party's insurance providers and asks that the information not be disclosed.

Appellant representations

[20] The appellant submits that he is seeking only the full name and address of the affected party, as it was not provided under section 200(1)(c) of the *Highway Traffic Act*,⁵ which states:

200 (1) Where an accident occurs on a highway, every person in charge of a vehicle or street car that is directly or indirectly involved in the accident shall,

(c) upon request, give in writing to anyone sustaining loss or injury or to any police officer or to any witness his or her name, address, driver's licence number and jurisdiction of issuance, motor vehicle liability insurance policy insurer and policy number, name and address of the registered owner of the vehicle and the vehicle permit number.

[21] He submits that after he was involved in the motor vehicle collision underlying the request, he asked the OPP officer if he should get the affected party's driver's license information, but he was told that relevant information would be found in the Motor Vehicle Collision Report. He states that he relied on this assertion and believed that the collision report would contain the affected party's full name and address.

[22] He disputes the ministry's claims that disclosure of the affected party's personal information would be an unjustified invasion of personal privacy. He references Order MO-4041, where the adjudicator ordered the disclosure of the name and address of an individual after weighing the presumption against disclosure for information compiled as part of a law-enforcement investigation with the fair determination of the appellant's rights. He submits that the adjudicator made a similar analysis and ordered disclosure of an affected party's information in Order MO-4213.

[23] He submits that the affected party was fully responsible for the accident and his insurance covered most of the cost of his damaged vehicle, but he is seeking further damages related to a down-payment on his vehicle that his insurance did not cover. He

⁵ R.S.O. 1990, c. H.8.

states that he has tried numerous avenues to recover the costs, but was unsuccessful, and the only avenue he has available is legal action against the affected party. He states that he cannot do this without the information he is seeking in this appeal and states that this information is relevant to the fair determination of his rights, engaging the factor favouring disclosure in section 21(2)(d).

[24] He notes that in Order MO-4213, the adjudicator found that the appellant, seeking information about a collision they were involved in, was entitled to access the personal information of the affected party involved in the collision in the most efficient and cost-effective manner available to them. He states that having the two pieces of information he is seeking would alleviate the need to engage a private detective to find the information or file a motion with the court to have the information be disclosed.

[25] He further states that by withholding the information, the ministry and affected party are preventing him from exercising his legal rights. He provided links to various websites outlining the requirement for individuals to exchange their personal information following a motor vehicle accident. He submits that he is frustrated that he had to go through such a lengthy process to get the affected party's information after he had relied on the OPP officer's statement that it would be contained in the report.

Ministry reply representations

[26] The appellant's representations were shared with the ministry for reply. The ministry submits that the two orders the appellant referenced were distinguishable from the present appeal because the affected party was notified prior to disclosure and had the opportunity to submit representations.

Affected party reply representations

[27] The appellant's representations were provided to the affected party for a response. The affected party stated that the appellant did not ask for her information at the time of the accident and she provided all required information to the police when asked. She also disputed whether the appellant was entitled to further compensation for the accident, but did not dispute the appellant's claims about his right to access the information at issue in this appeal.

Analysis and finding

[28] As stated above, the issue in this appeal is whether disclosure of the name and address of the affected party would be an unjustified invasion of their personal privacy under section 49(b).

Presumptions and factors

[29] If any of the five exceptions in sections 21(1)(a) to (e) apply, the section 49(b) exemption does not apply to the report. Based on the representations of the parties and

my review of the report, I find that none of the exceptions apply.

Investigation into a possible violation of law

[30] Under section 21(3)(b), the disclosure of an individual's personal information to another individual is presumed to be an unjustified invasion of personal privacy if the personal information:

... 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 of law or to continue the investigation.

[31] Even if no criminal proceedings were commenced against any individual, as is the case in this appeal, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of the law.⁶ I have reviewed the report, and it is clear that the information in the report was compiled as part of an investigation into a motor vehicle collision by an OPP officer, engaging the presumption in section 21(3)(b).

[32] In the circumstances of this appeal, where the record at issue contains the personal information of the affected party and the appellant, this presumption is not determinative, but instead a rebuttable presumption that can be weighed against the other relevant factors in section 21(2) below.⁷

Highly sensitive information

[33] The ministry submits that the information at issue in the appeal is highly sensitive for the purposes of section 21(2)(f), a factor that weighs in favour of withholding the information from the appellant. It references Order P-1618 where it was found that the personal information of individuals who are "complainants, witnesses, or suspects" as part of their contact with the OPP was found to be highly sensitive, and Order PO-3712, where 21(2)(f) was found to apply where consent had not been provided by affected parties whose information was contained in law enforcement investigation records.

[34] While I agree that it is generally the case that information provided to the police by individuals involved in the context of a law enforcement investigation is highly sensitive, I do not find that this is the case in all situations. Previous IPC orders have found that whether the name and address of an individual is highly sensitive information should be decided on the facts of the particular case.⁸ Additionally, in Order MO-4213, this factor was found to not apply in the case of an incident involving a collision between a motor vehicle and a bike where the requester sought the name and

⁶ Orders P-242 and MO-2235.

⁷ Order MO-2954.

⁸ See, for example, MO-2980.

address of one of the parties.

[35] In this particular appeal, the information at issue is the name and contact information of an individual who was involved in the motor vehicle collision. As the appellant submits, the *Highway Traffic Act* contemplates this information being exchanged between parties following a collision, and the OPP's website states that this is required of all drivers involved in a collision.⁹ Accordingly, given the context in which the information was provided to the police, I find that this factor does not apply and therefore has no weight when considering whether disclosure would constitute an unjustified invasion of personal privacy.

Fair determination of rights

[36] The appellant submits that the information is required to pursue a legal claim against the affected party. He submits that he has tried other avenues with his insurance company to obtain additional damages resulting from the accident but has been unsuccessful and the only remaining option available to him is a legal claim, for which he requires the information at issue, engaging the section 21(2)(d) factor favouring disclose.

[37] The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?¹⁰

[38] Based on the information before me, it is clear that the factor applies to the information at issue. Although the affected party disputed the merits of any claims in her representations, it is not disputed that the appellant requires the information to pursue the claim through the courts and that he is entitled to do so.

[39] Previous IPC orders, such as MO-2442, have found that the existence of

⁹ <https://www.opp.ca/index.php?lng=en&id=115&entryid=56b787fe8f94ac9f5828d172>, accessed November 3, 2023.

¹⁰ 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.).

alternative means to obtain the information, such as through a court order, diminish the weight that should be placed on section 21(2)(d).¹¹ It is also the case here that other avenues for obtaining the information at issue exist.

[40] However, considering the context of the appeal, where the appellant is seeking the information to pursue a civil claim for damages related to a totalled vehicle, I agree with the appellant's submission, referencing MO-4213, that he is entitled to seek the information in the most cost-efficient manner possible. Additionally, I adopt the adjudicator's reasoning in MO-4213 that the existence of an alternative route for accessing the information does not preclude a requester from exercising their rights under the *Act*. As such, I find that the section 21(2)(d) factor is engaged, favouring disclosure.

Balancing the factors

[41] In its reply representations, the ministry explained that the orders referenced by the appellant were distinguishable from the present appeal because the affected party was notified of the appeal and had the opportunity to provide representations. Considering that the affected party in this appeal was also notified and also provided representations, I do not find that they are distinguishable on this basis. On the contrary, I find that the orders the appellant referenced to be similar in circumstance to the present appeal.

[42] I have considered and weighed the presumption in section 21(3)(b) and the factors discussed above. I find that, despite the presumption that weighs against disclosure, the importance of the affected party's name and address to the determination of the appellant's rights means that disclosure of the information at issue would not be an unjustified invasion of the affected party's personal privacy under section 49(b). Accordingly, I will order the information disclosed.

ORDER:

1. I order the ministry to disclose portions of the report related to the affected party as described above. I order the ministry to disclose this information by **January 4, 2024**, but not before **December 28, 2023**. I have provided the ministry with a copy of the record, highlighting this information in yellow. To be clear, only the information that is highlighted in yellow should be disclosed to the appellant.
2. In order to verify compliance with Order provision 1, I reserve the right to require the ministry to provide me with a copy of the report disclosed to the appellant.

¹¹ See also, for example, MO-3631.

Original signed by: _____
Chris Anzenberger
Adjudicator

November 23, 2023 _____