



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER 37

Appeal 880074

Ministry of the Solicitor General



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## O R D E R

This appeal was received pursuant to subsection 50(1) of the Freedom of Information and Protection of Privacy Act, 1987 (the "Act") which gives a person who has made a request for access to a record under subsection 24(1) or a request for access to personal information under subsection 48(1) a right to appeal any decision of a head under the Act to the Commissioner.

The facts of this case and the procedures employed in making this order are as follows:

1. On January 29, 1988, the Ministry of the Solicitor General (the "institution") received a request for access to statements or allegations made by four individuals, whose names and addresses were provided to the institution by the requester, with respect to complaints against him alleging misconduct as a police officer both on and off duty.
2. Following receipt of the request, the institution issued notices to affected persons (the individuals named in the request) in accordance with section 28 of the Act, and received representations from them.
3. By letter dated March 18, 1988, the Freedom of Information and Privacy Co-ordinator for the institution wrote to the requester advising that "...partial access is granted to documents relating to your request. Access is denied to documents containing personal information under sections 14 and 21 of the Act. These provision applies [sic] because the release of these documents would constitute a breach of confidentiality and an unjustified invasion of privacy".

4. By letter dated March 28, 1988, the requester appealed the decision of the head. I gave notice of the appeal to the institution and the affected persons previously identified by the institution.
5. The records relevant to this appeal were obtained and reviewed by an Appeals Officer from my staff, and between March 28 and July 21, 1988, attempts were made to effect a settlement in the matter. These mediation efforts were unsuccessful.
6. On July 21, 1988, I sent notice to all parties that I was conducting an inquiry to review the decision of the head. Accompanying this notice was an Appeals Officer's Report. By letter dated August 4, 1988, I advised the parties of my decision to deal with the matter by way of written representations and requested submissions by August 31, 1988. Representations were received from all parties and I have considered them in making my Order.

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records qualifies as "personal information", as defined by subsection 2(1) of the Act.
- B. Whether the exemption provided by subsection 14(2) (a) of the Act applies to any record.

- C. If the answer to Issue B is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.
- D. If the answer to Issue A is in the affirmative, whether the exemptions provided by subsections 21(1) and 49(b) of the Act apply in the circumstances of this appeal.

The records for which exemptions have been claimed are Complaint Processing Reports; an internal memorandum; statements of individuals; and parts of a police officer's notebook.

The Complaint Processing Reports are forms used by the Ontario Provincial Police to accept and record complaints from members of the public against officers of the Ontario Provincial Police. The Reports contain the following information: the time and date the complaint was received; the complainant's name, home and business addresses and phone numbers; the location of the alleged incident; the name of the Police Officer against whom the complaint was filed; the particulars of the complaint and action taken; the name of the person in the Provincial Police Force who received the complaint; and the name and signature of the detachment commander.

The internal memorandum contains a summary of the investigation of the allegations, together with an outline of the evidence, the findings of the officer who prepared the memorandum, and any recommendations made by that officer.

The statements are the accounts given by individuals regarding allegations of misconduct against the appellant; and the police

officer's note book contains information received from individuals during investigation of the complaint.

Before addressing the specific issues raised in this appeal, it should be noted that the purposes of the Act as set out in subsections 1(a) and (b) are:

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that information should be available to the public and necessary exemptions from the right of access should be limited and specific, and,
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Further, section 53 of the Act provides that where a head refuses access to a record, the burden of proof that the record falls within one of the specified exemptions in this Act lies upon the head.

**ISSUE A: Whether the information contained in the records qualifies as "personal information", as defined by subsection 2(1) of the Act.**

In all cases where the request involves access to personal information it is my responsibility, before deciding whether the exemption claimed by the institution applies, to ensure that the information in question falls within the definition of "personal information" in subsection 2(1) of the Act, and to determine

whether this information relates to the appellant, another individual or both.

Subsection 2(1) of the Act states,

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

- (a) information relating to 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 where 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".

In my view, all information contained in the records at issue in this appeal falls within the definition of personal information

under subsection 2(1). I find that the statements and/or allegations contained in each of the records are properly considered recorded information about both the appellant and the individuals who made them.

**ISSUE B: Whether the exemption provided by subsection 14(2) (a) of the Act applies to any record.**

The records for which subsection 14(2) (a) of the Act was cited as the basis for refusing disclosure are the Complaint Processing Reports and the internal memorandum.

Subsection 14(2) (a) reads as follows:

A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

...

The Act does not define the word "report". However, "report" is defined in the Oxford Dictionary as: "an account given or opinion formally expressed after investigation or consideration or collation of information..."

"Law enforcement" is defined by subsection 2(1) of the Act to mean:

- (a) policing,

- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

Subsection 43(3) of the Police Act gives the Commissioner or Deputy Commissioner of the Ontario Provincial Police authority to inquire into the conduct of any member of the Ontario Provincial Police Force. The Code of Offences, the procedure for disciplinary proceedings, and the penalties for violation of the Code of Offences are detailed in Regulation 791, under the Police Act.

After reviewing the records, I am satisfied that both the Complaint Processing Reports and the internal memorandum are reports prepared in the course of law enforcement and investigation by an agency which has the function of enforcing and regulating compliance with a law, and meet the requirements for exemption under subsection 14(2)(a).

**ISSUE C: If the answer to Issue B is in the affirmative, whether the exemption provided by subsection 49(a) of the Act applies in the circumstances of this appeal.**

Subsection 49(a) of the Act provides that:

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

- (a) where section 12, 13, 14, 15, 16, 17, 18, 19, 20, or 22 would apply to the disclosure of that personal information;

...



I have found under Issue A that the contents of the Complaint Processing Reports and the internal memorandum qualify as "personal information" about the appellant, and under Issue B that this same information meets the criteria for exemption under subsection 14(2)(a) of the Act. The exemption provided by subsection 49(a) therefore applies, and gives the head discretion to refuse disclosure.

The head has exercised his discretion by deciding to release part of the Complaint Processing Reports and to withhold disclosure of the internal memorandum. I am satisfied that the head has given reasonable consideration to the options available to him prior to exercising his discretion not to release portions of these records, and, in my view, this decision should not be disturbed on appeal.

**ISSUE D: If the answer to Issue A is in the affirmative, whether the exemptions provided by subsections 21(1) and 49(b) of the Act apply in the circumstances of this appeal.**

I have found under Issue A that the information contained in the records at issue in this appeal qualifies as "personal information" under the Act. I must now determine whether the head was correct in denying access to the records on the basis that they fell within the exemptions provided by subsections 21(1) and 49(b).

The records for which these exemptions were claimed are the statements made by the affected persons and the Police Officer's notebook entries. The head maintains that to release this

information would constitute an unjustified invasion of the personal privacy of the individuals who provided the information to the police.

Subsection 21(1)(f) provides that:

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

...

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Subsection 47(1) of the Act gives individuals a general right of access to:

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

However, this right of access under subsection 47(1) is not absolute. Section 49 provides a number of exceptions to this general right of disclosure of personal information to the person to whom it relates. Specifically, subsection 49(b) provides that:

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

...

- (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

...

Subsection 49(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then subsection 49(b) gives him the discretion to deny access to the personal information of the requester.

Subsections 21(2) and (3) of the Act provide guidance in determining if disclosure of personal information would constitute an unjustified invasion of personal privacy. Subsection 21(2) sets out some criteria to be considered by the head:

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

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;

- (d) the personal information is relevant to 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;
- (g) the personal information is unlikely to be accurate or reliable;
- (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 record.

The subparagraphs of subsection 21(3) of the Act go on to describe a number of types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

In deciding how to deal with the appellant's request, the head asked for and received representations by the individuals named in the request. After reviewing these representations, the head concluded that all of the information contained in the records was personal information that related to these affected persons because "...each complaint or statement describes incidents which were taking place in the lives of the complainants...". Disclosure of this information would, in the opinion of the head, constitute an unjustified invasion of their personal privacy.

The head submitted that the personal information in question was furnished by the individuals in confidence, and that: "...this

consideration is supported by paragraph 21(2)(h) of the Act. Also, it is to be noted that any allegations made against [the appellant] were not sustained and no further action was taken in these matters."

The appellant argued that he is entitled to this information by virtue of the procedures in place for Ontario Provincial Police Complaint Processing Orders, which require that a member of the police force against whom a complaint is lodged be made fully aware of the circumstances surrounding the complaint. He provided documents to demonstrate that in other instances, both

before and after the complaints underlying this appeal, the full record of complaints against him, including the identities of the complainants, were released to him by the institution. His contention is that "...the OPP are picking and choosing when they will follow their own police orders in hiding behind this new legislation to protect their wrongdoings and their failings to afford me all of the facts and allegations made against me so I can clear my untarnished record for the past twenty years."

The appellant further submitted that "...my interests totally outweigh the personal privacy interests of third parties and so far I am the aggrieved party, my right to privacy and confidentiality have been violated, my good character as a police officer for twenty years standing have been slandered, my standing in the community has been tarred and been feathered...".

The individuals affected by this appeal have objected to the disclosure of their personal information contained in the records in question.

In applying the subsection 49(b) balancing test to the circumstances of this appeal, I am mindful of the fact that the records under consideration were originally produced in the course of an employment-related complaint concerning the appellant. In such situations, fairness demands that the person complained against be given as much disclosure of the substance of the allegations as is possible. The degree of disclosure would depend on the circumstances of each particular case, but should be more extensive if the complaint is likely to result in discipline. In this case, the head did disclose a significant portion of the records, including a description of the substance of the complaints made against the appellant. In this case, the complaints did not proceed to the point where there was any likelihood of discipline, and, in my view, the degree of disclosure by the head was fair in the circumstances.

Having examined the records in issue, and considered the circumstances of this appeal and the representations of the appellant and the affected persons, it is my view that the disclosure of the statements and notebook entries to the appellant would constitute an unjustified invasion of the personal privacy of the individuals who made the statements. As such, these records are subject to exemption under subsection 49(b) of the Act.

As noted under Issue C, the head has the discretion under section 49 to release a record even if it meets the test of an exemption. The head has exercised his discretion and decided not to release these records. I find nothing improper or inappropriate with this exercise of discretion and would not alter it on appeal.

Accordingly, I uphold the decision of the head and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Sidney B. Linden  
Commissioner

\_\_\_\_\_  
January 16, 1989  
Date