



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

# **ORDER P-272**

**Appeal 900631**

**Ministry of the Solicitor General**



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## O R D E R

### BACKGROUND:

On September 17, 1990, the Ministry of the Solicitor General (the "institution") received a request for access to an internal investigation report resulting from an investigation conducted at a particular Ontario Provincial Police detachment. Access was also sought to any notes, statements or reports related to the main report. The requester is a member of the detachment staff.

The record identified by the institution as responding to the request consists of an 11 page report and 38 pages of hand written notes related to interviews conducted with staff members of the detachment.

Access was granted to notes related to information provided by the requester during the course of his interview (pages FI00003 and FI00004 of the record). Access to the balance of the record was denied on the basis that disclosure would constitute an unjustified invasion of the privacy of other individuals. The institution relied upon sections 21(2)(f) and (h) and 21(3)(g) of the Freedom of Information and Protection of Privacy Act (the "Act") to deny access.

The requester appealed the institution's decision through an agent (the "appellant").

Notice of the appeal was given to the institution and the appellant. The Appeals Officer assigned to the case obtained and reviewed a copy of the record.

As mediation efforts were not successful, notice that an inquiry was being conducted to review the head's decision was sent to the institution and the appellant. Notice was also given to 34 persons whose interests could be affected by the disclosure of the record

(the "affected persons"). An Appeals Officer's Report, which is intended to assist the parties in making representations to the Commissioner regarding the subject matter of the appeal, accompanied the Notices of Inquiry.

Prior to the receipt of representations by this office, the institution released the first three paragraphs on page FI00046 of the record, which were headed by the requester's name.

Representations were received from the institution, the appellant and 20 of the 34 affected persons. In addition to the exemptions originally relied upon, the institution cited sections 21(2)(e) and 49(b) of the Act in support of its position. One affected person consented to the release of the notes related to her interview (page FI00025 of the record). This portion of the record was subsequently released to the appellant by the institution, and is no longer at issue in this appeal.

**ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal Information", as defined in section 2(1) of the Act.

- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies to any portion of the record.
- C. If the answer the Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any portion of the record.

**SUBMISSIONS/CONCLUSIONS:**

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

The definition of "personal information" found in section 2(1) of the Act states in part:

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

...

(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,

...

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

...

(g) the view or opinions of another individual about the individual, and

...

I have reviewed the record and, in my view, the introductory headings and the portion entitled INTERVIEWS CONDUCTED on pages FI00039 and FI00040 of the record (pages 1 and 2 of the report); the paragraph entitled "RECOMMENDATIONS" on page FI00045 (page 7 of the report); and the portion entitled "ADDITIONAL RECOMMENDATIONS" beginning at the bottom of page FI00047 (page 9 of the report) through pages FI00048 and FI00049 of the record (pages 10 and 11 of the report), with the exception of the second complete sentence at the top of page FI00048, do not contain personal information. I order these portions of the record released to the appellant. Enclosed with the institution's copy of this order will be a highlighted copy of the record indicating the portions to be released.

In my view, the remaining portions of the record contain recorded information about the requester and/or the affected persons. These portions contain information relating to individuals' employment histories, personal opinions or views of individuals and views or opinions of individuals about other individuals. Therefore, I find that the information contained in the remaining portions of the record constitutes personal information as defined by the Act.

At various places throughout the record, the personal information of the requester is combined with the personal information of the affected persons. Accordingly, I will address those portions of the record that contain only the personal information of the affected persons under Issue B, and those portions of the record that contain the personal

information of both the requester and the affected persons under Issue C.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemptions provided by section 21 of the Act applies to any portion of the record.**

As stated above, discussion of this issue is restricted to those portions of the record which contain only the personal information of the affected persons, and not the requester.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this personal information, except in certain circumstances. One such circumstance is contained in section 21(1)(f) of the Act, which reads:

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

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

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(2) of the Act provides a non-exhaustive list of criteria for the head to consider in making this determination, and section

21(3) identifies types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

One of the sections relied on by the institution is section 21(2) (f), which reads as follows:

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,

the personal information is highly sensitive;

The record at issue in this appeal was prepared as a result of an investigation which took place in response to a serious morale problem at a particular Ontario Provincial Police detachment. The situation was such that an investigator from outside of the detachment was required. It is clear from the investigator's report that there were serious problems within that detachment, including conflict among various staff members. In their representations, a number of affected persons expressed concern that release of the portions of the record which contain their personal information could have a negative impact on their employment situations. The representations received from the

institution and various affected persons provide evidence that the information provided by the affected persons at the time of the investigation was frank and forthright, based on assurances of confidentiality. In addressing the possible causes for the

morale problem, the interviewees at times named other individuals within the detachment. There are strong indications that release of the remaining portions of the record would result in a reluctance on the part of staff within the detachment to speak frankly under similar circumstances in the future. The institution has submitted that since the issuance of the report, morale has improved and many of the problems have been rectified.

In his representations, the appellant makes no reference to section 21(2)(f). He submits that sections 21(2)(d) and (e) are relevant and combine to outweigh the affected persons' right to protection from unjustified invasion of privacy, but provides no evidence to support this claim.

Having reviewed the contents of the record and the representations provided by the various parties, it is my view that the personal information contained in the portions of the record not including the personal information of the appellant is properly considered "highly sensitive" and its disclosure would constitute an unjustified invasion of the personal privacy of the affected persons.

**ISSUE C: If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any portion of the record.**

Discussion of this issue covers those portions of the record which contain the personal information of both the requester and the affected persons.



Section 47(1) of the Act gives individuals a general right of access to any personal information about the individual in the custody or control of the institution. However, this right of access is not absolute. Section 49 provides a number of exceptions to the general right of access to personal information by the person to whom the information relates.

Section 49(b) provides that:

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;

Section 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/her own personal information against another individual's right to protection of his/her privacy. If the head determines that disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, section 49(b) gives him or her the discretion to deny access to the personal information of the requester.

Considering the nature of the personal information, the manner in which it was received and the general circumstances surrounding the creation of the record, it is my view that the personal information of the affected persons contained in the

portions of the record which include the personal information of both the appellant and the affected persons is properly considered "highly sensitive".

As noted earlier, in his representations, the appellant submits that sections 21(2) (d) and (e) are relevant considerations in favour of disclosure, but provides no evidence to support this claim.

Having reviewed the contents of the record and all representations, I find that disclosure of the portions of the record in question would constitute an unjustified invasion of the personal privacy of the affected persons.

In determining that section 49(b) applies to the record, I am satisfied that the head exercised his discretion in accordance with proper legal principles and therefore the decision of the head to deny access to the record under section 49(b) should not be disturbed.

**ORDER:**

1. I order the head to disclose the following portions of the record in accordance with the highlighted copy provided:

- a) The introductory headings, and the heading and the information contained in the section entitled INTERVIEWS CONDUCTED on pages FI00039 and FI00040.
- b) The heading and the paragraph under the heading, "RECOMMENDATIONS" on page FI00045.

- c) The heading and the information contained in the section entitled, "ADDITIONAL RECOMMENDATIONS" beginning at the bottom of page FI00047 to the end of the record on page FI00049, with the exception of the second complete sentence from the top of page FI00048.
2. I uphold the head's decision not to release the balance of the record not referred to in provision 1 of this Order, including the second complete sentence from the top of page FI00048.
3. I order the head to disclose the portions of the record listed in provision 1 of this Order within twenty days (20) from the date of this Order and to advise me in writing, within five days (5) from the date of disclosure, of the date on which disclosure was made.
4. The notice concerning disclosure should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

February 18, 1992  
\_\_\_\_\_  
Date