



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

# **ORDER P-275**

**Appeal 900378**

**Ministry of the Solicitor General**



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## O R D E R

### BACKGROUND:

On May 10, 1990, the Ministry of the Solicitor General (the "institution") received a request for access to all information pertaining to the death of a named individual.

Prior to making its decision, the institution notified four affected persons, pursuant to section 28(1) of the Act. Two of these persons consented to release of the parts of the record which contained information relating to them, while the other two objected to disclosure.

On August 2, 1990, the institution advised the requester that partial access to the requested record would be given. On September 4, 1990, 86 pages (1-35, 38, 42, and 50A-99) were released to the appellant in their entirety; two pages (36 and 37) were withheld in their entirety; and eleven pages (39-41 and 43-50) were released with severances. The institution claimed sections 14(2)(a), 19, 21(1)(f), 21(3)(b) and 21(3)(d) of the Act as the basis for denying access.

On August 16, 1990, the requester appealed the head's decision to this office.

The Appeals Officer obtained and reviewed a copy of the record. The 13 pages at issue are police officers' notes and witness statements relating to an investigation into the death of the individual named in the appellant's request, all of which were created on March 29, 1981.

Mediation of the appeal was unsuccessful, and the matter proceeded to inquiry. Notices of Inquiry were sent to the institution, the appellant, the two persons who did not consent to the release of the information relating to them, and a third person identified during the course of mediation as having an interest in the outcome of the appeal (the "affected persons"). Written representations were received from the appellant and the institution, but none were submitted by any of the affected persons.

**ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the information contained in the record qualifies as "personal information", as defined by 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 parts of the record.
- C. If the answer to Issue A is yes, whether the discretionary exemption provided by section 49(b) of the Act applies to any parts of the record.
- D. Whether the discretionary exemption provided by section 14(2) (a) of the Act applies to any parts of the record.
- E. Whether the discretionary exemption provided by section 19 of the Act applies to any parts of the record.
- F. If the answer to Issue D or E is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.

**SUBMISSIONS/CONCLUSIONS:**

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

Section 2(1) of the Act 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,
- (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,
- ...
- (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;

In my view, all 13 pages contain information, including the names, addresses, ages, employment information and the views and opinions of identifiable individuals other than the appellant, which is properly considered the "personal information" of the affected persons under section 2(1). A small portion of page 36 of the record also contains the views or opinions of an individual other than the appellant, about the appellant, and I find that this information is the "personal information" of the appellant and one of the affected persons.

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

I have found under Issue A that the information contained in certain parts of the record qualifies as "personal information" of the affected persons. Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information, except in certain circumstances. One such circumstance is contained in section 21(1) (f) of the Act, which reads as follows:

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 21(3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. In its decision letter, the institution cites the application of sections 21(3)(b) and 21(3)(d) to raise the presumption that disclosure of the severed information would constitute an unjustified invasion of the personal privacy of the affected persons. These sections read as follows:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;
- (d) relates to employment or educational history;

Dealing first with 21(3)(b), the institution submits that the record was created as part of a police investigation into the death of a named individual, and that the purpose of this investigation was to determine whether a crime had been committed. As a result of this investigation, the appellant was charged and ultimately convicted of murder in the death of the named individual. In my view, the record was "compiled as part of an investigation into a possible violation of law", and the requirements of section 21(3)(b) have been satisfied. I find that disclosure of the severed parts of the record would result

in a presumed unjustified invasion of the personal privacy of the affected persons.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under subsection 21(3) have been satisfied, I must then consider whether any other provisions of the Act come into play to rebut this presumption.

Section 21(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 21(3). In my view, the records do not contain any information relevant to section 21(4), and this section does not operate to rebut the presumed unjustified invasion of personal privacy under subsection 21(3).

In Order 20, Commissioner Linden stated that "... a combination of circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view such a case would be extremely unusual".

Section 21(2) states, in part:

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,

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

...

- (f) the personal information is highly sensitive;

The appellant states that he is innocent of the crime, and that the record may provide new evidence to substantiate his claim. He maintains that "manipulation of evidence and witnesses" may have led to a wrongful conviction, and that his right to a fair hearing should outweigh other individuals' rights to privacy.

The institution submits that the severed information is not relevant to a fair determination of rights affecting the appellant. It also submits that the personal information contained in the record is highly sensitive. According to the institution, the affected persons who did not consent to disclosure expressed fear for their safety should the information be released. The institution maintains that the affected persons should have the right to "enjoy their lives in serenity and safety ...".

I have considered all submissions and carefully reviewed the entire record, including the parts which were disclosed by the institution. In response to the appellant's request, the institution released almost all of the record, severing only those limited parts where it believed other individuals' personal privacy might be unjustifiably invaded by disclosure. In the circumstances of this appeal, and based on the evidence before me, I find that the arguments in favour of disclosing the severed parts of the record to the appellant are not sufficient to outweigh the presumed unjustified invasion of personal privacy of the affected persons under section 21(3)(b).



Accordingly, I find that disclosure of the information contained in the severed parts of the record would constitute an unjustified invasion of the personal privacy of the affected persons, and I uphold the head's decision to deny access to these parts of the record.

Because I have found that the presumed invasion of personal privacy under section 21(3)(b) has not been rebutted, it is not necessary for me to consider the possible application of section 21(3)(d).

**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 parts of the record.**

Under Issue A, I found that a small portion of page 36 of the record contains the personal information of both the appellant and one of the affected persons. Therefore, I will now consider whether section 49(b) of the Act applies to this portion of the record.

Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right to access is not absolute. Section 49 provides a number of exemptions to this general right of access. One such exemption is found in section 49(b) of the Act, which reads as follows.

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;

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

I found under my discussion of Issue B that the presumption of an unjustified invasion of personal privacy of the affected persons was established under section 21(3)(b), and that this presumption was not rebutted by the application of any of the provisions of sections 21(4) or 21(2) of the Act. I further find that the disclosure of the information contained in the portion of page 36 which contains the personal information of both the appellant and one of the affected persons would constitute an unjustified invasion of the personal privacy of that affected person.

Section 49(b) is a discretionary exemption giving the head the discretion to refuse to disclose personal information to the individual to whom it relates where the disclosure would constitute an unjustified invasion of another person's privacy. I find nothing improper with the head's exercise of discretion, and would not alter it on appeal.

Because I have determined that all severed parts of the record are properly exempt under sections 21 and/or 49(b) of the Act, it is not necessary for me to consider Issues D, E and F.

**ORDER:**

I uphold the head's decision.

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

February 25, 1992  
Date