



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

ORDER P-362

Appeal P-911034

Ministry of the Solicitor General



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act (the Act) and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

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 copy of the record relating to the investigation of a motor vehicle accident in which five persons were killed. In particular, the requester was seeking access to any information relating to the blood alcohol levels of the five deceased persons.

The Ministry denied access to portions of the record, including the blood alcohol levels, pursuant to sections 14(1)(l), 14(2)(a) and/or 21 of the Act. The requester appealed the Ministry's decision.

During mediation, the scope of the appeal was narrowed to include only the results of the blood alcohol analyses of the five deceased persons which had been severed from a one page document identified as "Report of the Centre of Forensic Sciences". The Ministry claimed sections 14(2)(a) and 21 as the bases for exempting this information.

Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Written representations were received from the Ministry.

ISSUES:

The issues arising in this appeal are:

- A. Whether the record at issue 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.
- C. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

"Personal information" is defined in section 2(1) of the Act in part, as "recorded information about an identifiable individual..".

Section 2(2) of the Act states:

Personal information does not include information about an individual who has been dead for more than thirty years.

The record at issue is the post-mortem forensic test results of the blood and urine analyses of the blood alcohol concentration of five persons who were killed in a motor vehicle accident. In my view, this information consists of recorded information about identifiable individuals, and qualifies as "personal information" as defined in section 2(1) of the Act. Section 2(2) does not apply as the deaths occurred within the past thirty years.

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

Once it has been determined that a record contains personal information, section 21 of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f), 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 the disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual. Section 21(3) lists the types of information the disclosure of which is presumed to be an unjustified invasion of personal privacy. The Ministry relies on sections 21(3)(a) and (b) which read:

A disclosure of personal information is presumed to constitute and unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (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;

In my view, the post-mortem forensic test results of the blood and urine analyses of blood alcohol concentration relate to the medical condition of the five deceased persons at the time of their death. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(a) has been established.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under section 21(3) have been established, I must 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 record at issue in this appeal does not contain information relevant to section 21(4).

Section 21(2) provides some criteria for the Ministry to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. A combination of listed and/or unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 21(3); however, such a case would be extremely unusual.

I have not received any representations from the appellant in support of the relevance of any factors which would weigh in favour of disclosure of the record at issue. However, in his request and letter of appeal, while he does not specifically refer to section 21(2)(d), he has indicated that he has been retained by a law firm representing parties in a civil action arising out of the motor vehicle accident, and that the requested information is important in the civil law suits being defended by the firm. Section 21(2)(d) states:

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 relevant to a fair determination of rights affecting the person who made the request;

In Order P-312, Assistant Commissioner Tom Mitchinson, stated:

In my view, in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

For the purposes of this appeal, I acknowledge that the appellant is involved in a civil proceeding, and that the personal information he is seeking access to may have some bearing on the determination of the right in question. However, I have not been provided with any information which indicates that the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. Therefore, in the circumstances of this appeal, I feel that section 14(2)(d) is not a relevant consideration.

I have carefully considered the record at issue, the representations which have been provided, and the provisions of the Act, including any factors which could rebut the presumption of an unjustified invasion of personal privacy. In my view, the presumption raised by section 21(3)(a) of the Act has not been rebutted. Accordingly, I find that disclosure of the record at issue would constitute an unjustified invasion of the personal privacy of the five deceased persons.

Because of the manner in which I have disposed of Issue B, it is not necessary for me to consider the application of section 21(3)(b) and Issue C.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ November 03, 1992