



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

# **ORDER P-266**

**Appeal P-900090**

**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>

## O R D E R

This constitutes my Final Order disposing of the outstanding issues as referred to in Interim Order 152.

### BACKGROUND:

The requester was injured by a car which hit him while he was waiting at a bus stop. The requester began a court action against the driver of the car. In preparation for the court action, the driver's lawyer retained a private investigation firm to acquire information about the requester. Staff of the private investigation firm contacted a number of people to obtain information about the requester. This information was provided to the driver's lawyer. Eventually, the requester agreed to settle the court action.

The requester became aware that a private investigation firm had been hired by the driver's lawyer. The requester was concerned that the private investigation firm had acted inappropriately and lodged a complaint against the firm with the Ministry of the Solicitor General (the "institution"). The institution is responsible for overseeing the activities of private investigators by authority of the Private Investigators and Security Guards Act. At the conclusion of its investigation, the institution determined that the private investigation firm had not acted inappropriately.

The requester wrote to the institution requesting access to copies of the investigation documents compiled by the staff of

the institution as a result of his complaint of inappropriate conduct on the part of the private investigation firm.

The institution wrote to the requester advising him that partial access would be granted to the requested record, and relied on a confidentiality provision contained in section 18 of the Private Investigators and Security Guards Act, to withhold the remainder of the requested record.

The requester wrote to former Commissioner Sidney B. Linden appealing the decision of the institution.

The record consists of the report of an Ontario Provincial Police investigator and contains 31 pages of which 13 pages have been disclosed in full, 4 pages have been partially disclosed and 14 pages have been withheld in their entirety.

On February 27, 1990, Commissioner Linden issued Interim Order 152. At that time he ordered the institution to take the following action:

... my interim order in this appeal is that you [the institution] review the records at issue in this appeal for which the confidentiality provision was claimed, and, in respect of those records, make a decision as to the application of the Freedom of Information and Protection of Privacy Act, 1987, as amended. I ask that this decision be forwarded to the appellant by March 20, 1990, and that a copy of the decision letter be forwarded to my office within five (5) days of the date on which notice of the decision was given to the appellant. When this decision has

been made it may be appealed by the appellant, within 30 days, pursuant to section 50 of the Act.

As required by the Interim Order, the institution again reviewed the record at issue and issued a new decision. In this second decision, the institution denied access to the record pursuant to sections 14, 21, and 49 of the Act.

The requester launched a subsequent appeal stating that the institution had no right to withhold the record.

During the inquiry stage of this second appeal, the institution indicated that it would also be relying on sections 19 and 49(b) of the Act to deny access to the record.

**PRELIMINARY MATTER:**

As previously noted, in Order 152 Commissioner Linden ordered the institution to:

... review the records at issue in this appeal for which the confidentiality provision was claimed, and, in respect of those records, make a decision as to the application of the Freedom of Information and Protection of Privacy Act, 1987, as amended.

In his representations, the appellant submitted that:

Unless you have the rights to reconsider your own decision regarding subsections 14(1)(d), 14(2)(a) and 21(1)(f) of the Act I am asking for your final order as soon as possible to release ALL the documents.

As I understand it, the appellant feels that in Order 152 Commissioner Linden determined that sections 14(1)(d), 14(2)(a) and 21(1)(f) of the Act did not apply to the record and that the only issue left to be determined was whether or not section 18 of the Private Investigators and Security Guards Act applied to the record.

From January 1, 1988, to December 31, 1989, sections 67(2) and (3) provided as follows:

- (2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.
- (3) Subsection (2) shall not have effect until two years after this section comes into force.

These sections enabled institutions to rely on confidentiality provisions in other legislation (e.g. section 18 of the Private Investigators and Security Guards Act) to deny access to records. However, on January 1, 1990, section 67 was amended to limit the number of confidentiality provisions which would prevail over the Act to those listed in section 67(3). Section 67(3) reads as follows:

The following confidentiality provisions prevail over this Act:

1. Subsection 57(1) of the Assessment Act.
2. Subsections 41(8), (9) and (10), 50(4) and (5), 70(5), 71(6), 72(11), 112(6) and section 158a of the Child and Family Services Act, 1984.
3. Subsection 77(6) of the Colleges Collective Bargaining Act.

4. Section 10 of the Commodity Futures Act.
5. Subsection 51(1) of the Crown Employees Collective Bargaining Act.
6. Subsection 147(2) of the Courts of Justice Act, 1984.
7. Subsection 111(1) of the Labour Relations Act.
8. Subsection 32(4) of the Pay Equity Act, 1987.
9. Section 14 of the Securities Act.
10. Subsection 4(2) of the Statistics Act.
11. Subsection 24(2) of the Vital Statistics Act.

Section 18 of the Private Investigators and Security Guards Act was not included in section 67(3). Therefore, when former Commissioner

Linden made his Interim Order on February 19, 1990, he found it was no longer necessary to address the application of section 18 to the requested record. Commissioner Linden was of the view that the head had not made a decision under the Act, and therefore he referred the matter back to the institution, ordering the head to make a new decision with respect to the application of the exemptions contained in the Act.

I do not accept the appellant's interpretation of Interim Order 152 and find that the application of the confidentiality provision in section 18 of the Private Investigators and Security Guards Act is no longer at issue in this appeal. What

remains to be decided is the applicability of the exemptions claimed by the institution.

**ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested 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 discretionary exemption provided by section 49(b) of the Act applies.
- C. Whether the record in question qualifies for exemption under sections 14(1)(d) and 14(2)(a) of the Act.
- D. Whether the record in question qualifies for exemption under section 19 of the Act.
- E. If the answer to Issue C or D 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 requested record qualifies as "personal information" as defined in section 2(1) of the Act.**

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

Section 2(1) of the Act states:

"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,
- (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, the information contained in the record is properly considered personal information either about the appellant or about both the appellant and other individuals.

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

In its representations the institution claimed that section 49(b) applied to the record and that disclosure of the record would constitute an unjustified invasion of another individual's personal privacy.

Under Issue A, I found that the record contains personal information. Throughout the record, the personal information of the appellant is intertwined with the personal information of individuals other than the appellant.

Section 49(b) of the Act provides:

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;

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 own personal information against another individual's right to the protection of his or her privacy. If the head determines that release of the information would constitute an unjustified invasion of the other individual's

personal privacy, then section 49(b) gives the head discretion to deny access to the personal information of the requester.

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(3) of the Act sets out a list of the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The institution submits that the presumption of an unjustified invasion of personal privacy contained in section 21(3)(b) applies to the requested record. Section 21(3)(b) states:

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;

The investigation which generated the record at issue in these appeals was conducted by the Ontario Provincial Police. The Ontario Provincial Police (OPP) are required to investigate allegations of inappropriate conduct on the part of private

investigation firms under the Private Investigators and Security Guards Act. Section 32 of the Private Investigators and Security

Guards Act outlines the offences and sanctions relating to a contravention of that Act.

I am satisfied that the record was compiled and is identifiable as part of an investigation into a possible violation of law. Thus, there is a presumption raised that the disclosure of the personal information contained in the record would be an unjustified invasion of the personal privacy of the other individuals whose personal information appears in the record.

Once it has been determined that the requirements for a presumed invasion of personal privacy under section 21(3) have been satisfied, 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 does not contain any information that pertains to section 21(4). Consequently, none of the circumstances listed in section 21(4) operate to rebut the presumed unjustified invasion of privacy under section 21(3).

In Order 20, Commissioner Linden stated that ". . . a combination of the 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."

The appellant has not indicated that any combination of circumstances under sections 21(2) exists to rebut the presumption under section 21(3)(b), nor has he presented me with any other evidence to rebut this presumption.

As the release of the information would constitute an unjustified invasion of another individual's personal privacy, section 49(b) gives the head the discretion to deny access to the personal information of the requester. In weighing the appellant's right to access to his own personal information against the right to privacy of other individuals, the institution has provided me with evidence that the head has exercised his discretion. I find nothing improper in the exercise of discretion, and would not alter it on appeal.

As I have determined that the disclosure of the personal information in the record would be a presumed unjustified invasion of personal privacy, it is unnecessary for me to address Issues C, D, and E.

**ORDER:**

I uphold the head's decision.

Original signed by:  
Tom Wright  
Commissioner  
1992)

Date  
(Corrected to January 30,