



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

ORDER P-372

Appeal P-911136

Ministry of the Solicitor General



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ORDER

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 provincial Freedom of Information and Protection of Privacy 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 named police officer's (the investigator) report and his recommendations relating to the investigation of the requester's complaint against three named police officers (the three officers) of the Ontario Provincial Police (the O.P.P.). Specifically, the requester wanted access to the statements of the three officers and any information relating to the investigator's conclusion that the requester and his lawyer did not agree as to the course of events which led to the complaint.

The requester also sought access to "a report of the number of complaints, if there had been others besides mine, made against [the three officers] in the last five years".

The Ministry notified eight individuals named in the record of the request, and asked them for their views regarding disclosure of the record. Seven of these individuals objected to the disclosure of any personal information that relates to them.

The record which the Ministry identified as being responsive to the request consists of 71 pages. A total of 32 pages were released to the appellant in their entirety. Access to the remaining 39 pages was denied, in whole or in part, pursuant to sections 14(2)(a), 49(a) and 49(b) of the Act.

The requester appealed the Ministry's decision to deny access.

Mediation was not successful notice that an inquiry was being conducted to review the decision was sent to the Ministry and the appellant. Written representations were received from both parties.

The pages or parts of pages of the record that remain at issue are: 11 to 18 inclusive, 22, 36 to 62 inclusive, 65, 66 and 71.

Pages 11 to 18 are parts of a 22-page report prepared by the investigator. The severances on these pages consist of the investigator's summaries of the statements of the three officers and the witnesses interviewed in relation to the complaint.

Page 22 is an appendix which lists the attachments to the investigator's report. The severances on this page consist of the home addresses of witnesses.

Pages 36 to 62 are the actual signed statements of the three officers and the witnesses. These pages were withheld in their entirety.

Pages 65 and 66 are severed copies of an O.P.P. Occurrence Report.

All of the above pages form part of the investigation of the appellant's allegations of wrongdoing against the three officers.

Page 71 contains information that relates to the number of complaints against each of the three officers investigated by the O.P.P., during the five years preceding the appellant's request. This page was withheld in its entirety.

ISSUES:

The issues 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 discretionary exemption provided by section 49(b) of the Act applies to any parts of the record.
- C. 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.
- D. Whether the record qualifies under the discretionary exemption provided by section 14(2)(a) of the Act.
- E. If the answer to Issue D is yes, whether the discretionary exemption provided by section 49(a) applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the 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 Ministry apply, to determine whether the information falls within the definition of "personal information" as set out in section 2(1) of the Act, and whether it relates to the appellant, another individual or both.

Section 2(1) of the Act reads, 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,
...
- (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 of the information contained in the parts of the record which remain at issue falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act, and, with the exception of pages 22 and 71, relates to both the appellant and other identifiable individuals.

The information on page 22 consists of the addresses of individuals interviewed by the investigator as witnesses to the appellant's complaint. I find that this information relates solely to other identifiable individuals.

The information on page 71 relates to the number of complaints against the three officers, filed by individual's other than the appellant. I find this information relates solely to the three officers.

ISSUE B: 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.

I have found under Issue A that all of the remaining parts of the record, with the exception of pages 22 and 71 contain the personal information of both the appellant and other individuals. Section 47(1) of the Act gives individuals a general right of access to personal information in the custody or control of institutions. However, this right of access is not absolute. Section 49(b) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, 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) introduces a balancing principle. The Ministry must look at the information and weigh the requester's right of access to his/her own personal information against other individual's right to the protection of his/her personal privacy. If the Ministry determines that the release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 49(b) gives the head the discretion to deny the requester access to the personal information (Order 37).

Sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry has specifically relied on section 21(3)(b) of the Act, which provides:

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

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 Order P-285, Assistant Commissioner Tom Mitchinson found that investigations of allegations of violations of the Police Act qualify as investigations into a possible violation of law, for the purposes of section 21(3)(b). I agree. The record in this appeal relates to the O.P.P.'s investigation into allegations of breaches of the Code of Offenses of Regulation 791 under the Police Act, and possible violations of the Criminal Code of Canada, by the three officers. Accordingly, I find that these investigations qualify as investigations into possible violations of law, under section 21(3)(b) of the Act.

Having carefully reviewed the record and the representations of the parties, I find that all personal information contained in the parts of the record at issue was compiled and is identifiable as part of an investigation into a possible violation of law and, accordingly, its disclosure would constitute an unjustified invasion of personal privacy under section 21(3)(b).

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).

The appellant's representations do not specifically address any of the factors identified in section 21(2). I have carefully reviewed and considered the provisions of the Act, the record at issue, and the representations which have been provided. Having done so, I find that the presumption raised by section 21(3)(b) of the Act has not been rebutted.

In the circumstances of this appeal, I am of the opinion that disclosure of the personal information contained in the pages of the record outlined at the beginning of the discussion of this issue would constitute an unjustified invasion of the personal privacy of other individuals and, therefore, the exemption under section 49(b) of the Act applies.

Section 49(b) is a discretionary exemption. The Ministry has provided representations regarding the exercise of discretion to refuse to disclose the exempt portions of the record, and I find nothing to indicate that the exercise of discretion was improper in the circumstances.

ISSUE C: 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 found under Issue A that information contained on page 22 and 71 of the record qualifies as personal information that relates to individuals other than the appellant.

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. Specifically, section 21(1)(f) of the Act 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 (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the person to whom the information relates. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry has cited section 21(3)(b) to pages 22 and 71.

In my discussion of Issue B, I found that investigations of allegations of violations of the Police Act qualify as investigations into a possible violation of law, for the purposes of section 21(3)(b) of the Act.

In my view, the information contained on pages 22 and 71 relates to investigations of allegations of wrongdoing under the Police Act. I find that it consists of personal information which was compiled and is identifiable as part of an investigation into a possible violation of law and, accordingly, satisfies the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(b).

Once it has been determined that the requirements of a presumed unjustified invasion of personal privacy under section 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) is not relevant with respect to these records and, for the same reasons discussed under Issue B, I find that no combination of circumstances under section 21(2) exists to rebut the presumption established under section 21(3)(b).

In my view, the presumed unjustified invasion of personal privacy of individuals other than the appellant has not been rebutted. Accordingly, the personal information on pages 22 and 71 of the record is properly exempt under section 21.

Because of the manner in which I have disposed of Issues A, B, and C, it is not necessary for me to address Issues D and E.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Asfaw Seife
Inquiry Officer

November 24, 1992