



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

ORDER P-369

Appeal 900610

Archives of Ontario



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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 Archives of Ontario (the Archives), received a request under the Freedom of Information and Protection of Privacy Act (the Act), transferred to it from the Ministry of the Solicitor General, for access to all information relating to a fire that occurred at the requester's residence, in August 1978.

The Archives identified 29 pages as being responsive to the request. Eleven pages were released to the appellant in their entirety. Access to the remaining 18 pages was denied, in whole or in part, pursuant to sections 14(1)(d), (e) and (g), 14(2)(a), 15(b) and 21(1)(f) of the Act.

The requester appealed the Archives' decision to deny access.

Further mediation of the appeal was not successful, and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the Archives was sent to the Archives, the appellant, and the Royal Canadian Mounted Police (the R.C.M.P.). Written representations were received from the appellant and the Archives.

The records or parts of records which remain at issue are as follows:

Record 6 is a two page letter dated November 20, 1978, sent by an insurance company to an insurance claims adjuster. With the exception of five severances, the entire record was released to the appellant.

Record 8 is a six page letter dated November 20, 1978, sent by the R.C.M.P to the Ontario Provincial Police (the O.P.P.). The entire record was withheld from the appellant.

Record 9 is a five page O.P.P Supplementary Report, dated May 2, 1980. Page 2 of this report was withheld in its entirety while the remaining three pages were released to the appellant with severances.

Record 10 is a one page O.P.P Supplementary Report, dated December 12, 1978. This record was released to the appellant with two severances.

Record 11 is a five page O.P.P. General Occurrence Report, dated October 31, 1978. Page 5 of this record was released to the appellant in its totality, while pages 1 to 4 were released with severances.

Record 12 is a one page Fire Investigation Report from the Office of the Fire Marshall, Ministry of the Solicitor General, dated November 12, 1979. This record was released with two severances.

Record 15 is a one page Fire Investigation Report from the Office of the Fire Marshall, Ministry of the Solicitor General, dated July 27, 1979. This record was released to the appellant with four severances.

(The record numbers correspond to the numbers originally assigned to them by the Archives.)

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 15(b) of the Act applies to any of the records.
- B. Whether any of the information contained in the records qualifies as "personal information", as defined by section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.
- D. Whether the discretionary exemption provided by section 14(2)(a) of the Act applies to any of the records.
- E. Whether the discretionary exemptions provided by section 14(1)(d), (e) or (g) of the Act apply to any of the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 15(b) of the Act applies to any of the records.

The Archives claims section 15(b) of the Act applies to Record 8.

Section 15(b) reads as follows:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

reveal information received in confidence from another government or its agencies by an institution;

In order to qualify for exemption under section 15(b), the record must meet the following test:

1. the record must reveal information received from another government or its agencies; **and**
2. the information must have been received by an institution; **and**
3. the information must have been received in confidence.

[Order 210]

In its representations, the Archives states that the record is a law enforcement report prepared by the R.C.M.P., and relates to the investigation of individuals identified as potential suspects in the fire at the requester's residence. It submits that the information in this letter was received in confidence by the O.P.P.

In my view, disclosure of the record would reveal information received in confidence by the O.P.P., an agency of the Ontario Ministry of the Solicitor General from the R.C.M.P., an agency of the federal government. Accordingly, I find that this record qualifies for exemption under section 15(b).

The Archives has provided representations regarding the exercise of discretion in favour of claiming the exemption under section 15(b). I have reviewed these representations and find nothing improper in the circumstances. Record 8 is therefore exempt.

Because I have upheld the application of section 15(b) to this record, I will not consider it further in this order.

ISSUE B: Whether any of the information contained in the records qualifies as "personal information", as defined by section 2(1) of the Act.

The Archives has claimed that the severances in Records 6, 9, 10, 11, 12 and 15 are exempt under section 21 of the Act.

Before considering the application of the exemption, I must be satisfied that the information in question falls within the definition of "personal information" as set out in section 2(1) of the Act, and that it relates to an individual, other than the appellant.

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,
...
- (h) the individual's name if 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;

Having reviewed all the records, I find that the parts of Records 9, 10, 11, 12, and 15 which have not already been released to the appellant contain personal information that falls under one or more of the aforementioned definitions of personal information, and relates only to individuals other than the appellant.

The information severed from Record 6 relates to the names and titles of individuals acting in their professional or business capacities. Such information cannot be categorized as "personal information" as defined in section 2(1) of the Act [Orders 80, 113].

The Archives has not cited any other exemption to withhold the severances in Record 6. Having found that these severances do not qualify as personal information and since no mandatory exemption applies to them, they should be disclosed to the appellant.

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

In my discussion of Issue B, I have found that the severances in Records 9, 10, 11, 12, and 15 contain personal information of individuals other than the appellant.

Once it has been determined that a record contains such personal information, section 21 of the Act prohibits the disclosure of this information, except in certain circumstances. Specifically, section 21(1)(f) of the Act states:

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.

Subsections 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 an individual.

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

In its representations, the Archives states that section 21(3)(b) applies, as the personal information in all of the records was compiled during an investigation of a possible violation of law.

Section 21(3)(b) states:

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;

I have reviewed the records and in my view, the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. The records relate to an arson investigation conducted by the O.P.P. and the Office of the Fire Marshall.

Therefore, the requirements of section 21(3)(b) have been satisfied, and I find that disclosure of the severed parts of Records 9, 10, 11, 12 and 15 would result in a presumed unjustified invasion

of the personal privacy of the individuals whose personal information is contained in those records.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) 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 records at issue in this appeal do not contain information relevant to section 21(4).

Section 21(2) of the Act provides some criteria to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. In Order 20, former Commissioner Sidney B. Linden stated that "... a combination of circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under section 21(3). However, in my view, such a case would be extremely unusual".

In his representation, the appellant raises, although not directly, the factor mentioned under section 21(2)(d) as a relevant consideration. He submits: "It is my position that I am not guilty and have been wrongfully convicted [of murder] and sentenced to a life minimum 25 years sentence and that there is information in the files that I have requested that is pertinent to me proving my position".

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;

The appellant has raised no other factor under subsection 21(2), and in my view, in the circumstances of this appeal, I find that none are relevant.

In Order M-28, made under the Municipal Freedom of Information and Protection of Privacy Act, Commissioner Tom Wright has established that "... the application of 14(2)(d) alone is not sufficient to rebut the presumption contained in section 14(3)(b)." Sections 14(2)(d) and 14(3)(b) of the Municipal Freedom of Information and Protection of Privacy Act are identical to sections 21(2)(d) and 21(3)(b) of the Act, respectively. I agree with Commissioner Wright's view, and find that, regardless of whether section 21(2)(d) is a relevant consideration in the context of this appeal, it would not be sufficient to rebut the presumed unjustified invasion of the privacy of the individuals to whom the information relates.

I have considered all representations, and have carefully reviewed the records. In the circumstances of this appeal, and based on the evidence before me, I find that the arguments in favour of disclosing the records to the appellant are not sufficient to outweigh the presumed unjustified invasion of personal privacy of other individuals under section 21(3)(b). Accordingly, I find that the disclosure of the information contained in the severed parts of Records 9, 10, 11 12, and 15 would constitute an unjustified invasion of the personal privacy of the individuals to whom the personal information relates.

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

ORDER:

1. I order the Archives to disclose Record 6 in its entirety.
2. I uphold the Archives' decision to deny access to the remaining records.
3. In order to verify compliance with the provision of this order, I order the Archives to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

November 18, 1992