



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

# ORDER P-450

Appeal P-9300005

Ministry of the Solicitor General and Correctional Services



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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all information relating to a specific motor vehicle accident. Partial access to the records requested was granted. The requester appealed the decision. During mediation, the appellant narrowed the scope of his appeal specifically to the denial of access to the name, address, telephone number, date of birth and business address of a witness (the affected person), information which the Ministry withheld under section 21(1) of the Act. This information is contained in severed portions of the statement of the affected person taken by the police officer who investigated the accident. The severed statement was disclosed to the appellant.

During mediation, attempts were made to contact the affected person for the purpose of obtaining consent to disclosure but were unsuccessful. Notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant, the Ministry and the affected person. Written representations were received from the Ministry. The appellant indicated that he wished his letter of appeal and the documentation filed to date to constitute his representations.

## ISSUES:

- A: Whether the information 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 mandatory exemption provided by section 21 of the Act applies.

**ISSUE A: Whether the information in the record qualifies as "personal information" as defined in 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,

...

- (d) the address, telephone number, fingerprints or blood type of the 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;

The information at issue is the name, address, telephone number, date of birth and business address of the affected person. In my view, this information clearly falls within the above-mentioned paragraphs of the definition of personal information and relates solely to the affected person.

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

Under Issue A, I found that the record contains the personal information of the affected person.

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section.

In my view, the only exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), 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.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In determining whether section 21(1)(f) applies, consideration should be given to sections 21(2) and (3) of the Act which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy, and section 21(4), which lists a number of specific types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

Generally speaking, if a record contains information of the type described in section 21(4), the exception to the section 21 exemption contained in section 21(1)(f) will apply (Order M-23). The information at issue in this appeal is not one of the types of information listed under section 21(4); therefore, I find that this section is not applicable in the circumstances of this appeal.

Section 21(2) provides a non-exhaustive list of criteria for the Ministry to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy, while section 21(3) identifies specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Ministry states that section 21(3)(b) applies to the information in question. This section 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;

The Ministry submits that the information in question was compiled and is identifiable as part of the Ontario Provincial Police (the O.P.P.) investigation into a fatal motor vehicle accident. It indicates that the investigation was conducted by a detachment of the O.P.P., an agency which has the function of enforcing and regulating compliance with the law, with a view to determine possible violations of the Criminal Code of Canada or the Highway Traffic Act.

Having reviewed the record and the representations of the Ministry, I am of the view that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established.

In Order 20, former Commissioner Sidney B. Linden stated:

Clearly subsection 21(3) is very important in terms of the privacy protection portion of the Act. It specifically creates a presumption of unjustified invasion of personal privacy and in so doing delineates a list of types of personal information which were clearly intended by the legislature not to be disclosed to someone other than the person to whom they relate without an extremely strong and compelling reason.

The former Commissioner stated that "... a combination of the circumstances set out in section 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." I agree. Therefore, I must consider in the circumstances of this appeal, whether the provisions of section 21(2) come into play to rebut the presumption established under section 21(3)(b).

Although not directly, the appellant's representations appear to raise the possible application of section 21(2)(d) to the circumstances of this appeal. 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 states that he represents clients who have commenced a law suit claiming an interest in certain life insurance proceeds and that he requires access to the identity of the affected person as "that person will be a critical witness in the trial of the pending civil action." Even if I were prepared to find that section 21(2)(d) is a relevant factor in the circumstances of this appeal, as stated above, this factor alone is not sufficient to outweigh the presumption of unjustified invasion of personal privacy established under section 21(3)(b). I have carefully considered the provisions of section 21(2) and the representations of the appellant, and in my view, there are no other factors, listed or unlisted, which weigh in favour of the disclosure of the information, in the circumstances of this appeal.

Having carefully considered all of the circumstances of this appeal, I find that the presumption of an unjustified invasion of the personal privacy of the affected person has not been rebutted.

Therefore, in light of the application of section 21(3)(b) and the absence of sufficient evidence or argument weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception under section 21(1)(f) does not apply. Accordingly, I find that the mandatory exemption under section 21(1) prohibits the disclosure of the information at issue in this appeal.

## **ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Asfaw Seife  
Inquiry Officer

\_\_\_\_\_ April 29, 1993