



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

# ORDER P-453

Appeal P-9300004

Ministry of the Solicitor General and Correctional Services



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## ORDER

### BACKGROUND:

The Ministry of the Solicitor General (now 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 records relating to all investigations and prosecutions pertaining to the requester. The request was subsequently clarified to involve all personal information of the requester pertaining to the investigation into the death of a named individual, and the prosecution of a murder offence.

The Ministry granted partial access to the records. Access was denied to the Crown Attorney's handwritten notes, numbered as pages 6-23, under section 49(a) with regard to section 19 of the Act. Access was also denied to other records which were determined to be not responsive to the request. The requester appealed the Ministry's decision to deny access to pages 6-23, and indicated that he believed additional records exist which are responsive to his request. These records were the notebooks of three police officers who were involved in the investigation.

During mediation, the Ministry conducted a further search for the notebooks of the three police officers, and issued a supplementary decision letter indicating that no additional responsive records were located.

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

In its representations, the Ministry indicated that it was withdrawing the application of sections 49(a) and 19 to the Crown Attorney's notes. The Ministry stated that upon a further review of this portion of the record, it found that the notes did not contain the personal information of the appellant and, therefore, were not responsive to the request.

### ISSUES:

The issues arising in this appeal are:

- A. Whether the search conducted by the Ministry for the requested records was reasonable in the circumstances.
- B. Whether the information severed from the records located by the Ministry qualifies as "personal information" as defined in section 2(1) of the Act.

### SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the search conducted by the Ministry for the requested records was reasonable in the circumstances.**

While the representations of the appellant do not identify the possible areas of the Ministry where additional records may be located, he has, through the course of the appeal, identified the three police officers whose notebooks he believes may contain information responsive to his request. The appellant states that the investigation and the trial took place over a period of fourteen months and that he was a key character in the proceedings. Given the above, the appellant believes that more records responsive to the request should exist.

In its representations, the Ministry sets out the steps it followed to locate records responsive to the request. Upon receipt of the request, the appellant was contacted to clarify the scope of his request. The appellant indicated that he was requesting access to records pertaining to himself relating to a joint investigation with the Port Hope Police Service which commenced on October 18, 1978. As the Port Hope Police Service was the lead police service in the investigation, the Ministry transferred a copy of the request to the Port Hope Police Service.

The Ministry conducted searches within the Criminal Investigation Branch of the Ontario Provincial Police (the OPP) and the No. 8 District Headquarters of the OPP. Records responsive to the request were located at the Criminal Investigation Branch. No records responsive to the request were located at the No. 8 District Headquarters. During mediation of this appeal, the Criminal Investigation Branch confirmed that all records pertaining to the investigation had been forwarded to the Ministry.

During mediation and at the request of the appellant, the Ministry conducted further searches for the notebooks of the three police officers. The notebooks of two of the officers were obtained and reviewed. The third police officer retired from the force in 1992.

In its representations, the Ministry describes its document retention policy set out in the OPP Police Orders, section 27.1 as follows: retiring policemen's notebooks for the ten years preceding the retirement date are forwarded to the central repository at OPP General Headquarters for storage. Any notes prior to the ten year period are required to be destroyed in accordance with section 27.4 of the OPP Police Orders. The Ministry states that the retired police officer was contacted in order to obtain verification of the disposition of the notes, and informed the Ministry that his notes were disposed of upon his retirement as required by the Police Orders.

With respect to the appellant's claim that more responsive records should exist, the Ministry points out that the Port Hope Police Service was the lead police service conducting the investigation and therefore, would have generated and retained more records. The Ministry submits that it is unreasonable to assume that a lengthier investigation results in more records and that "... The passage of time is no indication as to the volume of records that are created during the course of an investigation."

I have carefully reviewed the representations of the Ministry with regard to the searches conducted pursuant to its obligations under the Act. In my view, thorough searches were

conducted during the course of processing the appellant's request and appeal and I am satisfied that the Ministry's search for the responsive records was reasonable in the circumstances.

**ISSUE B: Whether the information severed from the records located by the Ministry qualifies as "personal information" as defined in section 2(1) of the Act.**

The appellant requested access to all records pertaining to himself and the investigation which commenced in 1978. In the circumstances of this appeal, if a record located by the Ministry pertains to the investigation and contains the appellant's personal information, it will be responsive to the request. Where the Ministry has not claimed any exemptions, such a record should be disclosed to the appellant.

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

The Ministry indicates that the information severed from the records does not contain the personal information of the appellant and is, therefore, not responsive to the request. I have carefully reviewed all of the information severed from the records located by the Ministry (including pages 6-23 and the two police officers' notebooks) and, in my view, two portions of it do qualify as "personal information" of the appellant as defined in the Act. Specifically, page 304 contains the appellant's name and information pertaining to his part in the investigation, and page 431 contains the appellant's name and telephone number. In my view, no mandatory exemption applies to this information, and it should be released to the appellant. I have identified this information by "highlighting" it on the copy of the record which is being sent to the Ministry with this order. I am satisfied that the remaining information which has been severed from the records does not relate to the appellant and is therefore, not responsive to the request.

**ORDER:**

1. I order the Ministry to disclose the appellant's personal information which appears on pages 304 and 431 of the record to the appellant in accordance with the highlighted copy of these pages which has been provided to the Ministry with this order.
2. I order the Ministry to disclose the information referred to in Provision 1 of this order within 15 days of the date of this order.
3. In order to verify compliance with this order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provisions 1 and 2, **only** upon request.

Original signed by:  
Holly Big Canoe  
Inquiry Officer

May 6, 1993