



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

ORDER P-407

Appeal P-9200160

Ministry of the Attorney 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/Téléco: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Thunder Bay Police Force (the Police) received a request for access to information related to an investigation of an assault allegation arising from an incident which occurred in November 1987. The requester is the son of the individual who is alleged to have been assaulted. The requester provided the Police with a document signed by his mother indicating that she consented to his acting on her behalf.

The Police determined that records responsive to part of the request - specifically, records of the Crown Attorney's Office - would be held by the Ministry of the Attorney General (the Ministry). Accordingly, the Police transferred this part of the request to the Ministry, for processing under the Freedom of Information and Protection of Privacy Act (the Act). This appeal relates only to the part of the request that was transferred to the Ministry.

The Ministry compiled the responsive records in a package numbered from pages 1-79 (pages 75-78 are duplicates of pages 52-55) and responded to the request by granting access to several documents and denying access to several others, either in whole or in part, pursuant to sections 13, 19 and 21 of the Act. The requester appealed the Ministry's decision.

During mediation, the Ministry agreed to release pages 52-55 to the appellant but the appeal could not be completely resolved. Accordingly, notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from both parties.

In its representations, the Ministry indicated that its discretion to deny access to the records was exercised pursuant to section 49(a) of the Act.

The records which remain at issue, together with the exemptions claimed, are as follows:

Pages 7-11, 17-23, 31-32	access denied pursuant to sections 13(1) and 19 of the <u>Act</u> ;
Part of page 71	access denied pursuant to section 21 of the <u>Act</u> .

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. Whether the discretionary exemption provided by section 19 of the Act applies to the records.

- C. Whether the discretionary exemption provided by section 13 of the Act applies to the records.
- D. If the answer to Issue A and Issues B and/or C is yes, whether the discretionary exemption provided by section 49(a) of the Act applies to the records.
- E. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the records 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, finger-prints, or blood type of the individual,

...

(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;

Having reviewed the records, in my view, with the exception of the severance on page 71, they all contain the personal information of the appellant and his mother, in the context of the review by the Crown Attorney's Office of its decision not to lay charges in connection with the alleged incident.

The severance on page 71 consists of the address and telephone number of an individual whose name has already been disclosed to the appellant. I find that this information is personal information that relates solely to the individual.

Section 47(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right of access is not absolute. Section 49 provides a number of exemptions to this general right of access, including section 49(a) of the Act, which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, **13**, 14, 15, 16, 17, 18, **19**, 20, or 22 would apply to the disclosure of that personal information; [emphasis added]

I will now consider whether the exemption provided by section 49(a) applies to any of the records which I have found contain personal information that relates to the appellant and his mother, by virtue of the application of sections 19 and/or 13.

ISSUE B: Whether the discretionary exemption provided by section 19 of the Act applies to the records.

Under Issue A, I have found that all of the records, with the exception of the severed information on page 71, contain personal information that relates to the appellant and his mother. The Ministry claims that these records qualify for exemption under section 19 of the Act. Section 19 reads as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation.

This section consists of two branches, which provide a head with the discretion to refuse to disclose:

- (1) a record that is subject to the common law solicitor-client privilege (Branch 1); and
- (2) a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Ministry claims that the records qualify for exemption under the second branch of the section 19 exemption.

Two criteria must be satisfied in order for a record to qualify for exemption under Branch 2:

1. the record must have been prepared by or for Crown counsel; and

2. the record must have been prepared for use in giving legal advice, or in contemplation of litigation, or for use in litigation.

[Order 210]

Pages 7-11, 17-23 and 31-32 consists of correspondence between various Crown Attorneys in the context of a review of the decision not to lay charges pertaining to the alleged assault. In its representations, the Ministry states:

The records clearly on their face and upon a review of their content are records prepared by and for Crown Counsel as agents of the Attorney General and for the Attorney General from those same agents. Secondly, the Crown in these records was asked to give legal advice as to whether reasonable grounds existed to lay a charge. The Attorney General reviewed that advice given on his behalf by his agents.

I have carefully reviewed these pages of the record and in my view, they all satisfy the requirements for exemption under Branch 2 of the section 19 exemption.

The Ministry has claimed section 13 for these records; however, because I have found that they qualify for exemption under section 19, it is not necessary for me to consider Issue C.

ISSUE D: If the answer to Issue A and Issues B and/or C is yes, whether the discretionary exemption provided by section 49(a) of the Act applies to the records.

Under Issue A, I found that the records, with the exception of the severance on page 71 of the record, contain the personal information of the appellant and his mother, and under Issue C, I found that these records qualify for exemption under section 19 of the Act.

Section 49 is a discretionary exemption which allows the Ministry to grant or deny a requester access to information that relates to him/her. The Ministry has provided representations regarding its decision to exercise discretion in favour of denying access in the circumstances of this appeal. I have reviewed these representations and find nothing improper in the Ministry's exercise of discretion.

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

I found under Issue A that the severed information on page 71 is personal information that relates to another individual. 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) reads:

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 21(3) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to be an unjustified invasion of personal privacy. In its representations the Ministry specifically relies on section 21(3)(b) which reads as follows:

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 section 21(3)(b) applies to the information severed from page 71 of the record. Having reviewed the severance, I agree that this information was compiled by the Police in the course of its investigation of the allegation of assault, pursuant to the Criminal Code of Canada. In my view, the record contains personal information that was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established.

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 then 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 do not contain any information relevant to section 21(4).

Section 21(2) provides a list of factors, a combination of which, if present in the circumstances of an appeal, could rebut a presumption (Order 20). I have carefully considered the provisions of this section and the appellant's representations, and in my view, there is no combination of factors which would operate to rebut the presumption of an unjustified invasion of personal privacy. Therefore, the presumption raised by section 21(3)(b) of the Act applies, and disclosure of the severance on page 71 of the record would constitute an unjustified invasion of the personal privacy of an individual other than the appellant and his mother, and should not be released.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____ January 29, 1993
Asfaw Seife
Inquiry Officer