



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

# **ORDER P-482**

**Appeal P-9200622**

**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 the investigation file relating to a particular motor vehicle accident in which four people died. The requester represents the family of three of the deceased individuals.

The record identified as responsive to the request consists of 39 pages. Access was granted to 18 pages. The remaining pages were disclosed with severances. Pages 5, 8 and 12, and some of the information severed from pages 9 and 13 were disclosed with the exception of handcuff, revolver and flashlight serial numbers or information related to other law enforcement matters. This material was severed as not applicable to the request. Access to the remaining portions of the pages was denied pursuant to sections 14(1)(a), 14(1)(b), 14(1)(l) and/or section 21 of the Act. The requester appealed the Ministry's decision.

Mediation resulted in a narrowing of the number of records and exemptions at issue, but complete settlement of this appeal was not possible. Accordingly, notice that an inquiry was being conducted to review the aspects of the Ministry's decision still at issue was sent to the appellant, the Ministry and three of the individuals identified in the record (the affected persons). Written representations were received from the appellant and the Ministry. One of the affected persons contacted the Ministry to provide consent to disclose personal information related to him, and the Ministry disclosed the information to the appellant.

The fourteen pages which remain at issue are:

- page 1A - the severed portions of a toxicology report;
- page 11 - the severed portions of entries from a police notebook;
- pages 16 to 18 - the severed portions of a "will say" statement by a police officer;
- page 19 - the severed portion of a statement by a police officer;
- pages 21 to 22 - the severed portion of a statement by a police officer;
- page 23 - the severed portion of a statement by a police officer;
- page 24 to 25 - the severed portion of a statement by a witness;
- page 26 - the severed portion of a typed statement by a witness;
- page 27 - the severed portion of a statement by a police officer.

## PRELIMINARY ISSUE:

The appellant is of the view that the Ministry's decision letter did not sufficiently describe the nature of the severed information or explain why certain information was severed.

Section 29(1)(b) of the Act states:

Notice of refusal to give access to a record or a part thereof under section 26 shall set out,

- (b) where there is such a record,
  - (i) the specific provision of this Act under which access is refused,
  - (ii) the reason the provision applies to the record,
  - (iii) the name and position of the person responsible for making the decision, and
  - (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

I have reviewed the Ministry's decision letter and the records disclosed to the appellant, and it is my view that the requirements of section 29 of the Act were met. Although the decision letter did not provide general descriptions of the severed material, at least partial access was given to every page in the record. As a result, it is apparent on reviewing the severed version of the record disclosed to the appellant that the severed portions are, for instance, part of a page from a police notebook, or part of a statement given to police. Each page partially disclosed to the appellant had the severed portions clearly marked, with the relevant exemption claim noted on the page. In addition, the decision letter briefly explained why exemptions were claimed. In my view, the partial disclosure of each page made the nature of the severances readily apparent and, as a result, greater particularity was not necessary.

## **ISSUES:**

The issues arising in this appeal are:

- A. Whether the discretionary exemption provided by section 14(1)(a) or 14(1)(b) of the Act applies.
- B. Whether the information contained in the record qualifies as "personal information" as defined in 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.

D. Whether there is an over-riding public interest in the disclosure of the record.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the discretionary exemption provided by section 14(1)(a) or 14(1)(b) of the Act applies.**

The Ministry submits that sections 14(1)(a) and 14(1)(b) apply to all pages of the record, with the exception of pages 1A and 11. Section 14(1)(a) of the Act states:

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

interfere with a law enforcement matter;

The words "law enforcement" are defined in section 2(1) of the Act as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

In its representations, the Ministry states that the portions of the record in question relate to the investigation and prosecution of charges under the Police Services Act against members of the Ontario Provincial Police Tactical Response Unit (TRU Team). As a result of actions of members of the TRU Team at the scene of the accident, members of the team were charged with Neglect of Duty, contrary to section 1(c)(1) of the Code of Offences contained in Regulation 927 of the Police Services Act.

Pursuant to section 61 of the Police Services Act a penalty or sanction, including dismissal, demotion or suspension may be imposed if officers are found guilty as charged. Appeals of a penalty or sanction imposed on a member of the Ontario Provincial Police (OPP) officers are permitted under section 65 of the Police Services Act, within thirty days of receiving notice of the decision.

I have reviewed all the severed portions for which the Ministry claimed exemption under section 14 and am satisfied that all of them relate to the actions of the TRU team members at the scene of the motor vehicle accident in question.

In Order P-285, records relating to the investigation of an OPP officer charged with discreditable conduct under the Police Act were considered to be law enforcement records, as follows:

The record was created in the course of an investigation of conduct that was "unlawful" in the sense that it constituted an offence against discipline under a regulation. Moreover, on conviction of an offence against discipline, an appeal could be made to the Ontario Police Commission. The Commission, on appeal, had the power to impose a sanction or penalty independently of the Police Commissioner (employer). The Commission constituted, in my view, a "court or tribunal" in the sense intended by subparagraph (b) of the definition of "law enforcement". I am satisfied that the circumstances surrounding the creation of the record can properly be described as a "law enforcement" matter as defined in section 2(1) of the Act.

I conclude that the circumstances surrounding the creation of the records at issue in the appeal can also be properly described as a "law enforcement" matter as defined in section 2(1) of the Act.

I must now decide whether the disclosure of the pages of the record identified above could reasonably be expected to result in the harm specified in section 14(1)(a) of the Act, as claimed by the Ministry.

The pages of the record for which section 14(1)(a) was claimed contain information relating to witness statements regarding the actions of the TRU Team. The TRU Team officers have been found guilty of the charge of Neglect of Duty. On June 10, 1993, a penalty or sanction was imposed.

The officers may appeal the penalty or sanction imposed to the Ontario Civilian Commission on Police Services. Pursuant to section 63(2), this Commission may receive new or additional evidence. Section 63(3) of the Police Services Act provides that this Commission may confirm, alter or revoke the decision or may require a re-hearing of the matter.

Because it is possible that an appeal process could be commenced which, in certain circumstances, could result in the hearing of further evidence by the appeal body (which has as one of its options to order a new hearing), in my view, until either an appeal has not been filed within the time permitted or the appeal process is completed if an appeal is filed, it is not possible to categorically state that the law enforcement matter has been completed. It is also my view that the ability to conduct these proceedings without interference is vital to the Ministry's effectiveness in carrying out its responsibilities and mandate.

For this reason, I find that disclosure of the portions of the record for which section 14(1)(a) was claimed could reasonably be expected to interfere with a law enforcement matter, and section 14(1)(a) applies.

Section 14(1)(a) is a discretionary exemption. The Ministry has provided representations regarding the exercise of discretion in favour of refusing to disclose these portions of the record, and I find nothing improper in the circumstances.

As I have found that section 14(1)(a) applies to all the portions of the record for which sections 14(1)(a) and 14(1)(b) was claimed, it is not necessary for me to consider the application of section 14(1)(b).

**ISSUE B: Whether the information contained in the record qualifies as "personal information" as defined in section 2(1) of the Act.**

The Ministry submits that the severed portions of pages 1A and 11 contain personal information. Personal information is defined in section 2(1) of the Act, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

- (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;
- (c) any identifying number, symbol or other particular assigned to the individual,

...

Section 2(2) of the Act states:

Personal information does not include information about an individual who has been dead for more than thirty years.

The severed portions of page 1A contain the results of blood and urine analyses of a deceased individual not represented by the appellant. The severed portion of page 11 contains a number identifying the same individual and other information relating to him. I am satisfied that these

records contain information which qualifies as "personal information". Section 2(2) does not apply, as the individual's death occurred within the past 30 years.

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

Under Issue B, I found that pages 1A and 11 contain the personal information of an individual not represented by the appellant.

Section 21(1) of the Act prohibits the disclosure of personal information to any person other than 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) of the Act, 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 submits that sections 21(3)(a) and (b) apply to the information in question. These sections state:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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-362, I found that post-mortem forensic test results of the blood and urine analyses of blood alcohol concentration relate to the medical condition of a deceased person at the time of their death and that, accordingly, the requirements of a presumed unjustified invasion of personal privacy under section 21(3)(a) were established. In my view, the requirements of a presumed unjustified invasion of privacy have been established with regard to the severed portions of page 1A.

The Ministry stated in their representations that the remaining personal information was compiled as part of an OPP investigation into a possible violation of the Criminal Code of Canada or the Highway Traffic Act as a result of a motor vehicle accident occurring within its designated jurisdiction. I am satisfied that the information severed from page 11 was compiled and is identifiable as part of an investigation into a possible violation of law. As such, the requirements of section 21(3)(b) have been satisfied, and I find that disclosure of the severed portion of page 11 would result in a presumed unjustified invasion of personal privacy.

Once it is 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. A combination of listed and/or unlisted factors weighing in favour of disclosure might be so compelling as to outweigh a presumption under section 14(3); however, such a case would be extremely unusual.

The appellant states that section 21(2)(a) of the Act is a relevant consideration as the acceptability of the actions of the TRU Team members on the scene is at issue. Section 21(2)(a) reads:

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 disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

The sections of the record for which section 21 is at issue do not pertain to the activities of the officers, but relate only to the blood and urine analysis of a deceased individual and other personal information relating to him.

I have considered all representations and carefully reviewed the records for which the presumption under section 21(3) applies. In the circumstances of this appeal, and based on the evidence before me, I find that the arguments in favour of disclosing pages 1A and 11 are not

sufficient to outweigh the presumed unjustified invasion of personal privacy of the affected person under sections 21(3)(a) and (b). Accordingly, I find that disclosure of the severed portions of pages 1A and 11 would constitute an unjustified invasion of the personal privacy of an individual.

**ISSUE D: Whether there is an over-riding public interest in the disclosure of the record.**

In his representations, the appellant raised arguments pertaining to the public interest in the disclosure of the records at issue. The appellant states that the actions of the TRU Team officers relate to the priorities placed on the safety of members of the public and that these kinds of decisions will affect members of the public in the future.

In particular, the appellant has cited sections 11(1) and 23 of the Act. Section 11(1) provides as follows:

Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Section 11 of the Act is a mandatory provision which requires the head to disclose records in certain circumstances. The duties and responsibilities set out in section 11 of the Act belong to the head alone. As a result, the Information and Privacy Commissioner or his delegate do not have the power to make an order pursuant to section 11 of the Act (Orders 187, P-293).

Section 23 of the Act provides:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

In Issue A, I concluded that all severances except those on Pages 1A and 11 qualify for exemption under section 14 of the Act. Section 23 does not apply to exemptions from disclosure under section 14.

I concluded in Issue C, that the severed portions of pages 1A and 11 qualify for exemption under section 21 of the Act. As discussed in Issue C, these portions of the record do not relate to the actions of the TRU Team, but relate only to the blood and urine analyses and other personal information relating to a deceased individual. I am of the view that there is not a compelling public interest in the disclosure of this information.

**ORDER:**

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ June 21, 1993